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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1991

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

H.R. 5021

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1991, AND FOR OTHER PURPOSES

Part 2 (Pages 1-510)

Department of Justice
Department of State
Federal Trade Commission
Legal Services Corporation
Small Business Administration
The Judiciary

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
26-122 ⇆ WASHINGTON : 1990

5181-33

For sale by the Superintendent of Documents, Congressional Sales Office
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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1991

THURSDAY, APRIL 19, 1990

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, DC.

The subcommittee met at 10:04 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Rudman, and Kasten.

SMALL BUSINESS ADMINISTRATION

STATEMENT OF SUSAN ENGELEITER, ADMINISTRATOR

ACCOMPANIED BY LAWRENCE R. ROSENBAUM, COMPTROLLER

OPENING REMARKS

Senator Hollings. The subcommittee will continue our review this morning of the 1991 budget by hearing the requests of the Small Business Administration and the Legal Services Corporation. We will begin with SBA.

Our witness is the Administrator, Susan Engeleiter, and I want to personally thank you because we have had quite a time down there with Hugo and that crazy FEMA crowd. But the SBA group has been working hard around the clock. They have conducted themselves extremely well in the wake of Hugo. You have been on hand and working very hard and have accomplished much.

I want to give my special thanks to Berky Kulik, Dick Nash, Tom Fisher, Frank Stafford, and Linda Stedding. They all went beyond the call of duty. They have been on the phone and working things out in an outstanding manner.

I think what's probably wrong with the law is that people are not allowed to come back and get a loan. They have lost their trailer and everything else like that, so they can't pay. SBA does not lend money that doesn't have a good financial statement to assure repayment.

So the people then go and get $10,000 from FEMA, but they can't come back to SBA again with that $10,000 and show they could pay out, and could cover $15,000 or $20,000 and get their house back, their home or their trailer back or whatever it is. So they are sort of dead in the water. I wish you would touch on that. That is my opening view.

Ms. Engeleiter. Would you like me to address that question for you?

Senator Hollings. Yes; after we hear your statement, but first let me yield to Senator Kasten.

Senator Kasten. Mr. Chairman, thank you.

I am pleased to be here this morning as the subcommittee reviews spending requests for the Small Business Administration and the Legal Services Corporation.

I am particularly interested in the testimony of Susan Engeleiter. The Small Business Committee has been conducting a series of hearings on the SBA's 1991 budget request. Overall, I feel that the administration has come up with a sound and responsible budget proposal. This marked departure from the budget of recent years is largely due to the able leadership Susan has displayed at SBA.

At the same time, there are a number of areas in which I disagree with what the administration is proposing. It is important for this committee to develop a record on the issues. I look forward to the Administrator's testimony and to discussing in greater length the proposed changes to several key SBA programs.

SBA ADMINISTRATOR'S OPENING STATEMENT

Senator Hollings. Please proceed, Ms. Engeleiter.

Ms. Engeleiter. Thank you very much for the kind comments with regard to our efforts. In response to Hurricane Hugo, our agency was really tried to the limits for the Hugo disaster as well as the earthquake in California. So we appreciate your comments. Mr. Chairman and Senators, we are very pleased to be here today, as I am rapidly approaching the completion by my first year as the Administrator of the Small Business Administration. I am particularly pleased to come before your committee in an era where the President, after the agency's 37-year history, has really made a very strong commitment to a very much renewed and revitalized SBA.

I would really like to thank your committee and your staff, for the support that you have given us at the SBA since my confirmation.

At the SBA we believe we have one of the very finest teams in all of Government.

With me today is our agency Comptroller, Larry Rosenbaum, who has been with the agency for 23 years. I have a rather lengthy statement. If I might, Mr. Chairman, I will, in the interest of time, summarize it for you in just a few brief minutes.

Senator Hollings. It will be put in the record in its entirety. You highlight it as you wish.

Ms. Engeleiter. I will do that. We believe our fiscal year 1991 budget will allow the SBA to continue serving those new, small enterprises throughout the country and will also allow us to encourage the continued creation and growth of existing small businesses and thereby create many more new jobs.

Summarizing our budget request; $5.6 billion in program authority for our credit programs, and $336 million direct appropriation for our noncredit programs for administrative expenses.

The credit portion of our budget includes $3.8 billion for direct and guaranteed loans, $1.5 billion for our surety bond assistance program, and also $285 million for direct disaster loans.

The largest part of our credit budget is the $3.2 billion the President is requesting for the 7(a) general business loan guarantee program. I will point out that our fiscal year 1991 budget includes a specialized minority SBIC, or Small Business Investment Co., program budget request of $80 million in guarantee authority, which would replace the fiscal year 1990 budget of $31 million in direct assistance and $49 million in guarantee authority. Under the 1991 request, the interest rate on money that the Minority Small Business Investment Co. program lends would be subsidized at 3 percent below the Treasury's cost of borrowing for the first 5 years of 10-year debentures issued by specialized SBIC's.

Our budget request does include authorization for an increase in the surety bond program authority to $1.5 billion. That represents a $250 million increase in authority over the appropriated level for fiscal year 1990. Surety bonding is clearly one of the many needs of small businesses, especially those who are in the construction industry.

As for our disaster loan program, we are requesting loanmaking authority for fiscal year 1991 in the amount of $285 million. Hopefully, this amount will be adequate to meet what our expected obligations for an average disaster year, unlike 1990. I might also add that the agency recently made its 1 millionth loan in the disaster program since the program started in 1953. Since 1953, the agency has lent $12 billion in loans. You might be interested to know that roughly 94 percent of all homeowners and business owners through the history of the program have repaid their loans, and we are now estimating that for fiscal year 1990, the agency will be making loans totaling approximately $950 million, which includes a large portion for Hurricane Hugo and for the earthquake in California.

Finally, Mr. Chairman, as a part of a Governmentwide initiative to phase out direct lending in favor of guarantee lending, we request all business direct lending in the amount of $77 million be converted to guarantee authority with the exception of our disaster program and the $5 million for the 8(a) loan program which Congress passed and President Bush signed into law on June 15, 1989.

We propose to increase the guarantee fees on business loans, on investment companies and minority investment company loans. This proposal meets the goal of a long-range Governmentwide program to transfer the cost of Federal programs from the general taxpayer to the direct recipients of the programs.

Last, in regard to our credit budget, I would like to point out that our submission does not include any proposals this year for any type of asset sale.

The second major part of our fiscal year 1991 budget submission covers the agency's request for a direct appropriation of $336 million to the salaries and expenses fund. This appropriation will finance all of the salaries and related expenses of the agency and its noncredit programs.

Among the noncredit programs are the small business development centers and the small business institutes, which are on about 600 college campuses, the service corps for retired executives and the section 7(j) program, which offers 8(a) social and economically disadvantaged firms and other minority firms technical and management assistance.

We are proposing to increase SBA's current authorized employment level by 61 full-time equivalent positions, and these additional positions will be used in high-priority areas such as procurement assistance, SBIC servicing and the minority and women-owned business programs. The increase also includes a request for the Office of Inspector General to assist in their efforts to prevent waste, fraud, and abuse in our programs. We propose to nominally increase existing user fees by $1 million, and these fees would be generated equally from the sale of business publications and services of the procurement automation source system otherwise known as the PASS system.

We would like to point out that our budget includes a request for the Minority Business Development Commission of $865 million for its operation in fiscal year 1991, which represents an increase from this year's amount of $493,000.

The Women's Business Ownership Act, which you passed in 1988, created a new demonstration training program for women entrepreneurs, and it authorized $10 million for the program over 3 years—fiscal years 1989, 1990, and 1991. Congress appropriated $2 million for the program in each of fiscal years 1989 and 1990, and our fiscal year 1991 submission request is for $5 million.

The agency's Small Business Development Center Program has received tremendous support at the State and local levels, and unlike this past year where the previous administration requested no funding for this program, we are requesting $30 million for the Small Business Development Center Program. Estimates by the Association of Small Business Development Centers are that for every dollar of Federal funds that now go into that particular program, there is $1.50 that comes from State, local, and private entities. So for this fiscal year, there will be $50 million of Federal funds, and there will be $75 million from State, local, and private funds for the SBDC program.

We expect this sort of leveraging of Federal dollars to increase in amount and proportion in the future.

Finally, the fiscal year 1991 budget includes requests for a couple of management initiatives. There is a one-time request for $4.2 million, which is for the relocation and consolidation of our Washington central offices. Currently, these offices are in six locations around Washington. Our move will take approximately 6 months and during that time we will have to pay dual rent to GSA and must also cover our associated costs of relocating to our new building.

Our budget also includes a request for $3.5 million to replace a very outdated mainframe computer. Both of these initiatives, the new computer and the move, are well underway and are on target.

PREPARED STATEMENT

So in summation, Mr. Chairman and members, we at the SBA believe that the President's budget is a good news budget and it is a reflection of the Nation's commitment to the small businessmen and women around the country who contribute so very much to our economy. Thank you very much, and I would be glad to answer questions and perhaps we can start with your question, Mr. Chairman.

[The statement follows:]

Statement of Susan Engeleiter

Mr. Chairman and distinguished Members of the Committee: It is an honor to appear before you as I near the completion of my first year as Administrator of the U.S. Small Business Administration. I am particularly pleased to come before the Committee in this new era of the Agency's 37-year history—an era represented by President Bush's strong commitment to a renewed and revitalized SBA. I'd like to thank you and your colleagues for the assistance and support you have given the SBA since my arrival. I believe that we at the SBA have one of the best teams in all of government. One member of that team, accompanying me today is the Agency's Comptroller, Lawrence R. Rosenbaum, who has been with the Agency for 23 years.

As we begin deliberations on the Small Business Administration's Fiscal Year 1991 Budget, the United States small business sector remains very dynamic. During the first nine months of 1989, more than 520,000 new corporations were formed, 98 percent of which were small businesses. At the same time, business failures declined 15.6 percent from the first nine months of 1988.

The fiscal year 1991 budget will allow the SBA to continue serving those new, small enterprises and encourage the continued creation of more firms and more jobs. During my tenure as Administrator, this work will be guided by a number of goals formulated in a comprehensive process that solicited input from program professionals, industry and trade group representatives, Members of Congress and general practitioners in the small business community. These goals are to: Improve SBA's program delivery, including the elimination of red tape in the administration of the Agency's programs; improve the Agency's outreach in an aggressive effort to make small business aware of the assistance SBA can provide; ensure equal access and opportunity for all Americans, including minority and women entrepreneurs, so they will be able to compete on an equal footing in the U.S. economy; and improve the management and administration of the Agency to prevent waste, fraud and abuse.

Our fiscal year 1991 budget requests $5.6 billion in program authority for SBA's "credit" programs and $336 million direct appropriation for non-credit programs and administrative expenses. The "credit" budget of $5.6 billion includes $3.8 billion for direct and guaranteed loans, $1.5 billion for surety bond assistance, and $285 million for direct disaster loans. The largest part of the "credit" budget is the $3.2 billion for the 7(a) general business loan guaranty program.

The SBA's fiscal year 1991 budget request includes a strong commitment to our 7(a) loan guaranty program, by requesting funding at a level consistent with 1990 appropriations for the program. The Bush Administration believes this level of funding will help address the small business community's healthy demand for loans. We also believe that it will adequately fund several new guaranty programs added in recent years through legislation.

You have asked me to discuss SBA's loan portfolio and its health. As of February 28, 1990, SBA's total loan portfolio includes 250,083 loans worth $16.8 billion. Of these, 172,105 loans worth $5.6 billion are the result of direct SBA financing. This portfolio includes loans made through our business loan programs—7(a), Certified Development Companies, Small Business Investment Companies (SBIC's), disaster assistance, as well as direct lending to veterans, the handicapped, and 8(a) firms. Since 1953, SBA's loan programs have resulted in more than $58 billion in funding to America's small businesses.

We are continuing to implement policies to improve the quality of our loan portfolio. In 1982, SBA launched its Quality Lending Program. This Program is designed to improve all SBA lending and is based upon a philosophy in loan processing which emphasizes quality rather than numerical goals. As a result of that initiative, the

SBA today requires from its borrowers a more clear picture of their ability to repay their loans.

As of February 28, 1990, the 7(a) general business loan guaranty program accounted for almost $8.1 billion of SBA's loan portfolio, with 66,944 loans outstanding. It is important to note that within the 7(a) general business loan program 16 percent of all loans are provided to minority-owned firms and 14 percent are directed toward women-owned firms. The dollars loaned to small businesses through the 7(a) program come from SBA's lending partners, primarily commercial banks around the country. From 1953 to date, the total cumulative loss rate on 7(a) business loans is 8.2 percent of the total amount disbursed. However, this rate does not include anticipated losses from repurchased guarantees that are still in the Agency's liquidation portfolio. The ultimate loss rate for the 7(a) program, including recoveries on the liquidation portfolio, currently is 12.7 percent.

Based on the method used by commercial banks, SBA's loss rate in the 7(a) program appears more favorably. The latest loss rates reported by the FDIC show that in 1987 the loss rate on commercial loans by banks were approximately 1.2 percent. SBA's fiscal year 1989 loss rate based upon the same method is 3.3 percent. This figure shows an improvement over previous years, when losses averaged just under 4 percent. In the disaster loan program, the fiscal year 1989 loss rate is slightly higher, 3.9 percent. The difference between the commercial banks' loss rates and SBA's loss rates are not significant when one recognizes SBA's mission as the "lender of last resort" to small business.

The 1991 budget proposes substantial assistance to the venture capital needs of small businesses, including minority businesses, through the Small Business Investment Companies (SBIC's). We have just completed a major review of the SBIC's liquidation process. This review included how we value the portfolio, liquidate the assets, and "charge off" loans. We are seeking new ways to reduce the Federal Government's exposure to losses. We are updating our procedures manuals, closing out inactive cases, developing better procedures for valuing assets, creating liquidation plans for individual cases, and improving management information and recordkeeping systems. We are hiring additional staff to provide better oversight of the portfolio.

The fiscal year 1991 specialized minority SBIC budget request for an $80 million guaranty authority would replace the fiscal year 1990 budget of $31 million in direct assistance and $49 million in guaranty authority. Under the 1991 request, the interest rate for this program would be subsidized at 3 percent below the Treasury's cost of borrowing for the first five years of ten year debentures issued by specialized SBIC's.

This "guaranty" initiative was congressionally mandated in the fiscal year 1990 appropriation. As a result of that legislation, SSBIC's will be allowed to sell their debentures through the SBIC Funding Corporation, an arrangement previously limited to regular SBIC's. I am proud to say that this statutorily-required change was implemented in last month's SBIC funding, truly allowing SSBIC's to leverage their funds.

Our budget request also includes an increase in surety bond guarantee authority to $1.5 billion. This represents a $250 million increase in authority over the appropriated authority for fiscal year 1990. Surety bonding is clearly one of the needs of many businesses, especially those in the construction industry. The SBA continues its commitment to make the bonding process accessible to small and emerging contractors, including minorities and women, who find bonding unavailable to them.

As you know, legislation has mandated that SBA establish a pilot program to encourage the larger surety companies to help provide surety bonds to small businesses. The SBA has notified the surety bonding community that we are ready to accept their participation in this new Preferred Surety Bond program. The final regulations for this program have now been completed.

In recognition of the growing importance of surety bonding assistance to small business, SBA has begun upgrading its surety program. A reorganization meant to elevate the importance of the surety program is currently being implemented. Also, we have announced a nationwide search for a new Director for the program.

In fiscal year 1989, SBA's Office of Procurement Assistance saved the Federal Government approximately $290 million through its Breakout and Certificate of Competency programs. This office will be expanded through this fiscal year 1991 budget request. By calling for the appropriation of funds for an additional 30 procurement positions, this budget reflects the Bush Administration's commitment to increasing small business' share of federal procurement dollars. The cost of these positions will be more than offset by the savings generated through SBA's Procurement Assistance programs.

As you are aware, the Business Opportunity Development Reform Act of 1988 became law on November 15, 1988. That statute mandated positive changes in the 8(a) program by calling for a greater emphasis on the business development aspects of the program and an increase in the number and diversity of participating firms. The law also took appropriate steps to ensure that program benefits accrue only to eligible individuals and businesses.

SBA published final regulations to implement the statute on August 21, 1989. When I was sworn in as SBA's Administrator last May, the public comment period for SBA's proposed implementation of regulations had just closed, and the Agency was in the process of reviewing more than 300 comments received during this period. The final 8(a) program regulations published on August 21, 1989, represent a significant revision to the proposed regulations and reflect the goals of making 8(a) program criteria less subjective and providing equal access to program benefits for all eligible individuals and firms.

I am pleased, Mr. Chairman, to report today on the noteworthy progress that we have now made in our continuing efforts to implement this very complex legislation and the myriad programmatic changes it mandated.

In accordance with the provisions of the statute, on January 16, 1990, SBA began operations in its 10 Division of Program Certification and Eligibility field offices located in SBA's regional offices. In addition, concurrent with the establishment of the Division, we have prepared, printed in bulk and distributed for field use, the new 8(a) application forms mandated by the Business Opportunity Development Reform Act of 1988 (Public Law 100-656).

Pursuant to the statutory mandate to emphasize the business development nature of the program, during the past year, we have held 20 sessions to provide training to more than 500 agency employees. Training has included orientation on the new Business Plan form, financial analysis training, and intensive program eligibility instruction for the new COD staffs.

We have also taken steps to implement the statutory mandate that manufacturing contracts in excess of $5 million, and contracts in excess of $3 million in all other industries, be awarded through competition among eligible 8(a) firms instead of by sole source. To date, we have accepted 60 procurement opportunities worth over $300 million for the 8(a) competitive process.

Finally, we have taken steps to implement special provisions of the Act relating to 8(a) program applications and participants that are owned by Indian Tribes. To assure that this implementation process continues appropriately, SBA has established and staffed a position within its Office of General Counsel to coordinate Native American issues within the Agency.

Mr. Chairman, in a relatively short time, SBA is well on its way to implementing all the new provisions of Public Law 100-656. I am very proud of the Agency's accomplishments in achieving this difficult task. As well, it is appropriate to recognize our support for the Minority Business Development Commission by including $865,000 for its operations in fiscal year 1991—an increase from this year's amount of $493,000.

Thanks to the action of the Congress, the disaster program has more than adequate loan-making authority in our revolving fund account to handle last year's disasters, including two sizable disasters, Hurricane Hugo and the Loma Prieta earthquake. We are requesting loan making authority for fiscal year 1991 in the amount of $285 million. We believe this amount should be adequate to meet expected obligations of an "average" disaster year. Moreover, our fund balance will continue to grow as we receive repayments from the large loan volume disbursed in fiscal year 1990.

To put our disaster activity into perspective, let me mention the Agency's involvement in recovery efforts after Hurricane Hugo and the Loma Prieta earthquake. To respond to the magnitude of these two disasters, SBA expanded its disaster staff from 325 to 1,550. As of March 31, 1990, SBA had received 68,629 loan applications. We have verified losses in 98 percent of these cases and we've completed action in 88 percent of the cases. We have approved 34,909 loans for a total of more than $730.9 million. We estimate that between $750 and $800 million will be provided to assist victims of the hurricane and earthquake disasters.

And, we have reached a milestone in our disaster assistance program: recently, we made our one millionth disaster loan. The SBA has disbursed $12 billion in disaster loans since the inception of the Agency in 1953.

Mr. Chairman, I would like to acknowledge the tremendous efforts of our field and central office personnel who did an extraordinary job during a season of unprecedented disasters. Our staff has received many compliments from the leaders of the affected communities and states.

The purpose behind all SBA credit programs is to provide credit to those who cannot obtain it on the open market. This concept should also guide our disaster loan program. Therefore, we propose to restructure the program, providing loans at the Treasury cost of borrowing only to those individuals who cannot obtain credit in the private markets.

Finally, Mr. Chairman, with respect to our financial programs we request that all direct business loans, in the amount of $77 million, be converted to guaranteed loans, with the exception of our disaster assistance program and the $5 million for the section 8(a) loan program which the Congress passed and President Bush signed into law on June 15, 1989. The phase out of direct lending in favor of guaranteed lending is part of a government-wide initiative. Direct loan programs are more costly to administer and can result in larger losses to the Federal Government. In addition, guaranteed lending benefits the borrower by establishing a track record with a private lender, which will assist the borrower in its future credit needs.

Guaranteed loans are also more beneficial to the government because they allow us to serve more small business clients by leveraging resources. Also, to move toward actuarially-sound programs and to offset default costs that SBA incurs, we propose to increase the guaranty fees on business loans, investment company loans, and minority investment company loans. This proposal meets the goals of a long-range, government-wide program to transfer the cost of federal programs from the general taxpayer to the direct recipients of program benefits, and to make the programs more self-sufficient. The budget proposals of other Executive Branch agencies, such as the Departments of Transportation, Labor, and Agriculture also include fees to offset the cost of doing business.

Our proposal would increase the guaranty fee on business loans from 2 to 5 percent. Small Business Investment Company loans would be increased from 1.2 to 5 percent. The Specialized SBIC's or "MESBIC's" program would be increased from 1.2 to 3 percent. We do not expect the fee increase to have an adverse effect on the programs. For example, the fee increase in the 7(a) program would raise the monthly payments on the average loan by a nominal $75.

Also, we propose a modest fee of 0.06 percent on 7(a) general business loan secondary market transactions. This proposal is in line with other agencies, such as HUD, that currently sell FHA loans through the Government National Mortgage Association in the secondary market with a similar fee attached. This fee is designed to insure against potential losses from the additional Federal guaranty on the timely payment of principal and interest to investors in the secondary market program.

The second major part of our fiscal year 1991 budget submission covers the Agency's request for a direct appropriation of $336 million to the Salaries and Expenses fund. This appropriation will finance all of the salaries and related expenses of the Agency, including its non-credit programs. Among the non-credit programs are the Small Business Development Centers (SBDC) program, Small Business Institutes, the Service Corps of Retired Executives, and the Section 7(j) program, which offers 8(a) firms and other minorities technical and management assistance.

We are proposing to increase SBA's current authorized employment level by 61 full-time equivalent positions. These additional positions will be used in high priority areas such as procurement assistance, SBIC servicing, and minority-and-women-owned small business programs. This increase also includes a request for the Office of Inspector General to assist in their efforts to prevent waste, fraud and abuse.

In non-credit programs, we propose to nominally increase existing "user fees" by $1 million. This includes a $500,000 increase from the sale of business development publications and services of the Procurement Automation Source System (PASS).

Mr. Chairman, the contributions of women to the health and size of our economy have grown considerably in recent years. Between 1977 and 1987, the number of women-owned businesses increased from less than 2 million to almost 4.5 million. These enterprises have prospered. The average receipts for women-owned businesses have increased more than 27 percent since 1980.

The fiscal year 1991 budget submission reflects continuing support for several SBA efforts to build upon these positive trends among women-owned companies.

The budget submission contains $500,000 to continue the work of the National Women's Business Council. As you know, Mr. Chairman, this Council was created by the Women's Business Ownership Act of 1988 to study a variety of issues and to make annual recommendations to the Congress and President on initiatives in procurement, access to credit and other areas. Late last year, I was honored to be appointed by the President to chair the Council. The Council held its first meeting in January, and established four goals. We will focus on data collection, credit and bonding issues, international trade, and procurement.

Two other congressionally authorized programs for women-owned enterprises are also fully operational and are reflected in our 1991 budget. The Women's Business Ownership Act of 1988 created a new demonstration training program for women entrepreneurs, and authorized $10 million for this program over three years—fiscal years 1989, 1990 and 1991. Three demonstrations programs funded in 1989 are now fully operational; a fourth will be in operation by April. More than 30 proposals have been received for 1990; we anticipate that this year's grants will be announced this Spring. Congress appropriated $2 million for the program in each of fiscal years 1989 and 1990. The fiscal year 1991 submission proposes $5 million.

The Women's Business Ownership Act also created a new small-loan program under SBA's 7(a) loan guaranty program. This program is meant to encourage more lenders to issue guaranteed loans of less than $50,000, providing assistance to an underserved segment of the small business community. Smaller loans are expected to be particularly useful to women business owners, a sector dominated by service enterprises that typically need less capital. Regulations for the small-loan program were issued in September, and loans are now being made.

Overall, the 1991 budget request for $6.4 million for the Office of Women's Business Ownership, including $5 million for demonstration training grants, will allow SBA to meet the needs of the fastest growing sector of the American business community by increasing its outreach to women-owned businesses. The remaining $1.4 million will be used for the management and operations of the Office of Women's Business Ownership.

Mr. Chairman and Members of the Committee, the future of America's business lies with our ability to compete in the international marketplace. The SBA is working with the small business community to promote their prospects overseas. The SBA's Export Revolving Line of Credit (ERLC) is generally a short-term loan of no longer than 18 months and is used to finance materials and labor for dedicated export production. The maximum amount of this loan was increased from $500,000 to $750,000 by the Omnibus Trade Act of 1988. The program provided $10.5 million in capital for small exporters in fiscal year 1989, in addition to $26.2 million provided to exporters under the SBA 7(a) general business guaranty loan program.

In 1989, we also implemented a new loan program for exporters, the International Trade Loan Program, which was established by the same 1988 Trade Act. The International Trade Loan Program provides guarantees for loans up to $1 million and can be used by small businesses for capital expansion for export purposes. Users of an International Trade Loan may also combine it with an ERLC up to $250,000.

Additionally, I have met with the leadership of the Overseas Private Investment Corporation (OPIC) and the Export-Import Bank to pursue joint efforts to make the government's targeted credit enhancement programs simpler and easier to use for America's small exporters.

SBA also has been active in providing technical assistance to small firms interested in exporting. During fiscal year 1989, SBA sponsored or cosponsored approximately 600 export seminars and workshops across the country, reaching more than 25,000 small business persons. Some of these seminars were major events, such as a two-site conference on the U.S.-Canada Free Trade Agreement, which attracted more than 2,000 participants last June. Others were local seminars, attended by small business persons throughout the country.

In addition, we have forged an excellent working relationship and atmosphere of cooperation with the Department of Commerce. We have assisted in the Department's recent Matchmaker Trade Missions to Canada, Europe and Asia.

As we all know, some areas of rural America have not shared in the prosperity of our nation's record economic expansion in recent years. I believe that entrepreneurship and small business development are keys to helping revitalize our rural communities, and I believe the Small Business Administration has a critical role to play.

In support of the rural initiative announced by the White House on January 22, I announced on January 24 a 13-point initiative for SBA to focus more effectively on rural economic development. A study published by our Agency last June found that our major financial programs—7(a) general business guaranty loan program, Development Company Loans and Surety Bond Guarantees—are reaching rural America in rough proportion to the number of people living there. About 23.5 percent of the U.S. population lived in rural counties in 1986; about the same percentage of our major financial programs goes to those areas.

But that's a nationwide average. We believe that some rural communities may not take advantage of our 7(a) loan guaranty program, the Certified Development Company Program, Small Business Lending Companies, Local Development Companies or Small Business Investment Companies. Under the new rural initiative, SBA will identify underserved areas and take steps to target the programs more successfully to those areas.

Mr. Chairman, I am pleased to report to you today that the Small Business Innovation Research Program has, since its inception in 1982, awarded in excess of 15 thousand funding agreements to direct a share of Federal research and development funds to small high-tech companies—the type of companies which are responsible for most of the nation's new products, processes and technologies. The eleven participating agencies continue to report high quality proposals and performance in this program. Significant innovative awards continue to be made in the areas of information processing, microelectronics, lasers, advanced materials, instrumentation, biotechnology and medical technologies. The growth prospects for commercialization appear very encouraging.

I have recently submitted to the Congress a notification of my intention to move the Office of Innovation, Research and Technology from my office to that of the Associate Deputy Administrator for Special Programs. I believe that this will enhance the development of the full range of the commercialization responsibilities of the program and allow SBIR to be treated on an equal footing with the Agency's other key programs. Current SBA studies clearly indicate the remarkable commercialization potential of the technologies being developed under SBIR. It presently appears that over 20 percent of SBIR projects are going to the commercial marketplace. The SBIR program is currently authorized through fiscal year 1993.

Mr. Chairman, in fiscal year 1991 our Office of Veterans Affairs will continue its outreach program to America's veterans. Between fiscal year 1988 and fiscal year 1989, our outreach efforts provided a 40-percent increase in the number of veterans receiving counseling by SBA and its resource partners. Within SBA's 7(a) loan portfolio, a full 20 percent of the funds benefit our Nation's veterans.

We anticipate that by fiscal year 1991 all 50 states will be participating in the Agency's Small Business Development Center (SBDC) program. This program has received tremendous support at the state and local levels. Estimates by the Association of SBDC's are that for every dollar of federal funds now put into the SBDC program, at least $1.50 is put in by state, local and private entities. So for this current fiscal year there will be $50 million of federal funds and $75 million of state, local and private funds in the SBDC program.

We expect that this leveraging of federal dollars will increase in amount and proportion in the future. In fact, because of this success, we propose that the SBDC program be independent from federal funding by the end of fiscal year 1992. To accomplish this objective, we are asking for $30 million in federal funds for fiscal year 1991 and $15 million for fiscal year 1992. During this phase-out of federal funding, we will work closely with the SBDC's to help them obtain funds from other sources and to show them how to be effective without federal aid.

And finally, the fiscal year 1991 budget includes requests for several management initiatives. A one-time request of $4.2 million is for the relocation and consolidation of our Washington central offices. These offices are currently housed in six different locations. The move will take approximately six months, and during that time we will be required to pay dual rent to GSA and must also cover other associated relocation expenses.

Our budget also includes a request of $3.5 million to replace our outdated mainframe computer. Both of these initiatives are well underway and on target with scheduled completion dates.

Mr. Chairman and members of the Committee, we are ever mindful of the President's pledge to maintain a strong and healthy economy conducive to the prosperity of small businesses; that commitment to small business was reiterated in the President's State of the Union address in noting that we "encourage risk takers—especially those in our small businesses—to take those steps that translate into economic reward, jobs, and a better life for all of us." We, at the SBA believe the President's budget to be a "good news" budget and a reflection of this Nation's commitment to the small business men and women who contribute so much to our economy and to the opportunities inherent to this great land.

Thank you.

I will be glad to address your questions.

DISASTER ASSISTANCE LOANS

Senator HOLLINGS. Yes; first I had a general question about loans. Is it the law, or is it the administration of the law that negates, really, a lot of loans that are needed? It seems like we have got a lot of 8 percent, short-term loans and you have got a lot of 4 percent long-term loans, and there is no in between. Otherwise, it seems like you have a complicated form, and that is why I cited the situation earlier. SBA has been helping fill in these forms, but you have got all of these folks in areas like what we had in South Carolina that have no records and what have you. So they couldn't really flesh out the forms as required. Then once done, they found they couldn't get the money because they couldn't prove any worth; their worth had washed away.

So then they go over to FEMA. The best they can get is a $10,000 grant, but they can't come back to SBA a second time now that they have the $10,000. If they could then have positioned themselves—they have a job, and $10,000 and that will help them make a lesser payment and really qualify and pay back the SBA loan.

A lot of people are still falling through the cracks.

What about it? How can I correct that?

Ms. ENGELEITER. Well, let me just make a few comments, Mr. Chairman, about the disaster program. The way the program is structured currently, and as you know, it is changed by law periodically through time as to what the interest rates are and who can qualify. But for business loans, the rate is 4-percent interest over the course of 30 years for those people who cannot get credit elsewhere and for those who can get credit elsewhere the rate is 8 percent, and this loan needs to be paid back over 3 years.

For home loans, we have the same criteria: 4-percent loans if people cannot get credit elsewhere and they need to be paid back in 30 years. People who are not creditworthy and cannot pay the money back as determined by SBA are then eligible for the FEMA grant program, and hopefully, there shouldn't be too many people falling between the cracks currently. The program has not had any major revision in a number of years, and Chairman Bumpers and his committee have recently had a followup hearing to our budget hearing on the disaster program.

Frankly, I think it might be appropriate to take a look at the provisions in the law in not only this area as to who might be falling through the cracks, but if there are other areas in the disaster program where there haven't been adjustments made to reflect changes through time.

Senator HOLLINGS. We do have quite a few falling through those cracks.

Ms. ENGELEITER. We could give you some information as to exactly what is required, what the SBA requires and basically what people are asked in our determination of eligibility for a loan. They are asked if they have ever had an SBA loan before. They are asked if they have flood insurance, because that is relevant. They are asked if they have any other Federal loans. They are asked if they have ever been delinquent in paying back a Federal loan or a contract or a grant. They are asked if they have ever been convicted of a felony, and they are also being asked if they are being paid by someone to help them in filling out the application.

Senator HOLLINGS. If we had to fill that out, we wouldn't qualify for the Senate. [Laughter.]

You have already got me disqualified. [Laughter.]

What I am getting at is the poor person who can't qualify for all those questions and goes over to FEMA. It seems if they had a second chance to come back and say, "Well, I have got the $10,000 from FEMA; I have a good job. My trailer or my house has washed away. I can make those payments, because it would be a lesser payment or something," but there is no provision for that. Once they go to FEMA, you slam the door. You say, "Don't come back here; it's over" and the $10,000 leaves them with one-half a hair cut. They can't do anything.

ASSISTANCE FOR DISASTER VICTIMS

Ms. ENGELEITER. My understanding, Mr. Chairman, is that there isn't much that we can do about that unless the law is changed to allow us to lend money to people who are already in the FEMA grant program.

Senator HOLLINGS. I am going to ask Chairman Bumpers to look at that, Dale, because they are falling through the cracks. They are the really needy ones. I almost go back to when I was out West one year, with a fellow named Walter Benson of the Valley National Bank. He described how banks in the West were different from the ones in the East. They were very innovative out in the west and did a wonderful job, and we finally caught up here, 35 years later.

But it seems to me our SBA—I think we have an excellent operation over there, and we commend you on these repayments—but when you get the disaster, I am somewhat frustrated. I can go out to Belmont and bet $1,000 on Old Blue, and if the horse hasn't come in yet, I can write off my gambling losses. I can go to the clubs at night and somebody mentions the ABC corporation, but I am not listening closely, and I buy $50,000 of XYZ by mistake, and I can write that loss off.

But Hugo comes and washes my home away, my life and my savings and everything else. I am given the SBA form. Did you see that SBA form that said, "How many small business employees do you have broken down by sex?" And the form came back and said, "None. Alcoholism is our problem." [Laughter.]

Ms. ENGELEITER. I don't know how to handle that question, Mr. Chairman.

Senator HOLLINGS. He is the chairman of the Small Business Committee.

Senator BUMPERS. I can't believe there are that many people that haven't heard that story. [Laughter.]

My God, I quit telling that story 10 years ago. [Laughter.]

Senator HOLLINGS. We have got to do something about such a situation; that it really is a disaster, and we have got to try to provide better protection.

Ms. ENGELEITER. Mr. Chairman, if I might add a comment, in regard to the kind of assistance that people are given to help them to fill out the forms and to get what is allowable under the law. Right after Hurricane Hugo and the earthquake, I personally visited your State, as well as Puerto Rico, the Virgin Islands, and California and I also visited our disaster assistance centers. A number of things were done, including workshops that were conducted for homeowners and business owners. The system that is used at the disaster centers is a very efficient one, where people essentially do one-stop shopping for all Federal and State and local assistance that is available. We also did public service announcements in all of the disaster areas to inform the public about the 800 number so people could call with any kind of questions concerning our SBA program. There were many people who utilized the 800 number and who also attended our workshops.

Individual assistance was available at the disaster assistance centers to help applicants fill out the forms. There were Federal employees or volunteers, especially from banks, available at the disaster centers to personally assist victims in completing their applications.

VIRGIN ISLAND DISASTER VICTIMS

Senator HOLLINGS. Let me ask you about the people pinned down in the Virgin Islands. The situation arises from property and casualty insurance company defaults. Their insurance fund has a balance of $15 million; the uncovered policyholder claims $55 million as a result of Hugo, and as I understand it, the Governor of the Virgin Islands has asked SBA to make $40 million available as loans to policyholders with unpaid claims against insolvent insurers.

Can we do that?

Ms. ENGELEITER. Well, Mr. Chairman, we are looking into that right now. I have met with both the Governor and the Lieutenant Governor of the Virgin Islands in the last couple of weeks. They have a very unfortunate situation in that the two local insurance companies in the Virgin Islands did not have proper reinsurance, and consequently, went belly up. There are many people in the Virgin Islands who had their insurance with those companies and who are now not able to rebuild because of that unfortunate situation.

The Virgin Islands has come forth recently with a specific proposal that will require their legislature to pass legislation which essentially would use their reinsurance fund with an SBA guarantee. This fund results from a surcharge that is placed on an insurance policy when purchased. Those people who participate in this program would be eligible.

Legally, it looks as though we could do this. I just recently got an opinion from our General Counsel. Potentially, our exposure could be as high as $50 million if this fund in the Virgin Islands was not able to honor the guarantee or if they had financial problems. So that issue needs to be considered.

Senator HOLLINGS. But that is honest, and that is deserving. I am paying out $50 billion this year for crooks in the savings and loans. I want to find something here for both people who played the game right and invested, paid their money and everything else, and that is really a disaster to them. Don't you think so?

Ms. ENGELEITER. Yes; this is a very extreme situation in the Virgin Islands, where over 25 percent of the people who live there were wiped out by this natural disaster. Right now we are in discussion with the Virgin Islands, and it looks like we will be coming to closure very quickly.

Senator **Bumpers**. Mr. Chairman?

Senator **Hollings**. Yes; let me yield.

Senator **Bumpers**. Our staff has been checking into that, and we believe that they have the authority to do it.

Senator **Hollings**. Right.

Senator **Bumpers**. The relevant question, as far as I am concerned, at this point is: Will you do it? Because if you are not, it is going to be some time. We have got another fairly major hearing. We are going to go to authorization markup on SBA. Of course, we could put the authority in there, if there is any question about it.

As I say, I think that would be redundant. I think they have the authority, but I think the question is: Will they do it, because these people are exposed down there and they need the help now. The Lieutenant Governor testified at our budget authorization hearing, and he was a very persuasive witness. He made this proposition that Susan just described for you, that they will go ahead and use this $14 million fund, if we will agree to make the loans.

Senator **Hollings**. We can make it up. We will find it somewhere.

Senator **Rudman**. I don't know whether you can answer this or not, but I think in most States, that kind of a thing happens under the insurance laws of those States. There is an understanding under a compact for all other companies that write similar insurance in that State that they have to pick up the losses of any company which has had a bad reinsurance or bad risk analysis or whatever.

In my own State, it happened about 20 years ago, and every other company that wrote in that area had to pick up those losses. Is that not so in the Virgin Islands?

VIRGIN ISLAND DISASTER ASSISTANCE PROPOSAL

Ms. **Engeleiter**. Yes; that is so. The problem, as I understand it, in meeting with the Governor and the Lieutenant Governor, is that there are so few companies that are doing business in the Virgin Islands that there is not a sufficient pool. But we do plan to proceed based on the recent proposal we received from the Virgin Islands

Senator **Bumpers**. Warren, the way I understood the Lieutenant Governor, and Susan, you correct me, the way I understood the proposition he was making to us was, they would take all present and future payments into that insurance guarantee fund, which, as you know, is a premium on every policy, they go ahead, and what they want is for the SBA to make loans now, to make them hold it and repay them with future payments out of this guarantee fund; isn't that right, Susan?

Ms. **Engeleiter**. Yes; that is correct.

Senator **Rudman**. My only question is, I don't have a problem with that; I would not want to see any private corporations through some clever interpretation of their obligations to make it their responsibility. That is my only problem.

Senator **Bumpers**. They have a law, an insurance guarantee fund law there, just as most States do, and they assured us that they would be willing to guaranty the payments on these SBA loans from that fund.

Senator HOLLINGS. Let me yield to you, Senator Rudman.

CAPITAL ACCESS IN THE NORTHEAST

Senator RUDMAN. I only have one question, really, and I will yield to Senator Bumpers, the chairman of the authorizing committee. I am wondering whether or not your agency is paying attention to what is going on in New England. In New England, they have adopted new regulations; they have adopted new formulas which have really closed down credit, to a large extent, to many small businesses. There has been an over expansion of real estate.

The Bank of Boston is taking some enormous losses which have been all over the national press, and that has now resulted in a great caution in the banking industry which is coming off their experiences in the South and the Southwest. That resulted in a credit crunch where many legitimate and creditworthy customers cannot get bank loans.

It seems to me that is an ideal place for the SBA to get involved.

What I want to know is how vigorously are you looking at this? I would say, probably, in Maine, Vermont, New Hampshire, Massachusetts, and I can't speak for any other State, but certainly in Massachusetts, they are having major credit problems. There are stories about it every day in the business pages of the paper.

What is SBA doing about this to try to bridge this gap which we believe is only temporary, because the economy is essentially healthy.

Ms. ENGELEITER. Senator, we are doing a variety of things. Anecdotally, what you are finding in New England is also going on to some degree, in various other parts of the country. In New England, Texas, Arizona, and other places, where the real estate market is soft, the problem is even worse.

The problem is a result of what has happened with the savings and loan industry and the bond market. Some large corporations were financed through junk bonds and are now able to pay off those bonds. They are now not doing as much business and sending business to small firms. This causes a ripple effect and definitely a tightening of credit.

EFFORTS OF THE SAVINGS AND LOAN PROBLEMS

We are seeing the effort of this problem impacting the 7(a) guarantee loan program, the Small Business Investment Co., and the Minority Small Business Investment Co. program. We are seeing a lot of new interest in all of our lending programs because of these problems.

In response, we are really trying to do major outreach to the small business trade associations who are having particularly unique problems. One that I might mention is having a substantial problem, and perhaps you are already aware of, is the home building industry. It is in a terrible crunch. I met recently with the president of the National Home Builders. Because of the restrictions and the changes in the law regarding what kind of investments can be made, there are many reputable, longstanding home building companies around the country who are having their credit, current credit that they now have, canceled.

It is a very, very difficult situation. We are reviewing our legislative and regulatory restrictions under our $3.2 billion 7(a) lending program to determine if there is anything we can do to assist homebuilders. We will come to the Congress, if necessary, after reviewing these to see if some changes can be made in the law that can help the homebuilding companies.

Through trade associations we are learning about these individual instances, and as you are aware, our Office of Advocacy has a large budget for research of emerging issues that are affecting small businesses. This topic is the No. 1 research issue. We are working with the Federal Reserve Board right now, and other Federal agencies, to formulate a very comprehensive study to be done.

The Journal of Commerce is already publishing a request for proposals to do a major study to look at what is happening generally in the area of homebuilding.

Senator RUDMAN. I appreciate that. Quite frankly, I don't think a study will do it. I think you will have to redirect your resources, or frankly, the reason we have a SBA is going to become moot.

Let me give you an example. I was up in New Hampshire last week and from that office, I was all over the State. I know of perfectly reputable businesses who the SBA has told, "You are fine. We will guarantee your loan," and the banks have been unwilling to take a guaranteed loan.

Now, that causes me to wonder about your direct loan program and whether or not this isn't a time that you are going to have to look at that, or else you are going to have to get your people up there to be more aggressive in dealing with the banks that they have dealt with for a long time.

You know, if we study this for a year, I guarantee you a lot of these small businesses aren't going to be here in a year. That is the problem.

SBA OUTREACH EFFORTS

Ms. ENGELEITER. You are exactly correct, Senator. Right now, we believe our guaranteed loan funding will be adequate. However, if the credit crunch continues, maybe it won't be adequate. We have dramatically stepped up the agency outreach efforts over last year. In light of the status of the agency through the eighties, there wasn't an extensive amount of marketing going on.

One of the outreach efforts that we are undertaking is sponsoring local seminars with local banks throughout the country. We are making a real point to have top, senior people at SBA, myself included, appear at the state banking conventions throughout the country. All 50 States have annual State banking commission conventions. Stepping up the outreach locally to banks is the key for our 7(a) guarantee loan program. Through history, there have been about 11,000 banks that have participated. The more banks that we can get to participate, the more we can help the small businesses.

Senator RUDMAN. I would want you to pay some special attention to the New England area in the coming months—especially your regional directors up there—because I see a bad situation up there, and I have lived there all of my life. I sense something going on there right now which is most unusual for our region. I think that is a place where the SBA can take action.

Senator **Hollings**. It is all over the country. I hate to interpose, but it is an intended policy of Nick Brady, Alan Greenspan, and all of them, that, by gosh, put us into this crunch, because we are not paying anyplace. I can talk to the administration all day long, but she is not going to participate. This happened in my State and down in the west coast, the same thing. That is what is going on. Excuse me.

DISASTER ASSISTANCE

Senator **Bumpers**. Mr. Chairman, I don't have very much. We have already had Ms. Engeleiter and her staff testify before our committee before on these. I must say that in all fairness the SBA, particularly with Hugo, had been right in the middle of that since the first case came up. Since I have been a ranking member and chairman of the Small Business Committee, I have been to a number of these places where there is actually a center set up. One of the big problems is people's expectations. When you see all these people moving in, their expectations shoot up. They think somebody is just going to come and hand them a check for whatever damage they sustain. When those expectations are dashed and they find out there is a lot of red tape, they go through and immediately become bitter.

Sometimes I do think that the regulations of the people that run those disaster centers unduly feed that dampening of expectations and feed that hostility and cause it.

By the same token, you know, the disaster program just doesn't cover everything. So all I am saying is, in all fairness, having said that, you are absolutely right. There are a lot of people. We have tried to manage these things up here with FEMA and disaster aid, Farmers Home and SBA both, so that nobody falls between the cracks, but they always do. Always a lot of folks are falling between the cracks. I think this proposal that you mentioned, Mr. Chairman, is one that makes a lot of sense.

The question I would ask Ms. Engeleiter is: Do you have the authority now, for example, to do as the chairman suggested. Somebody goes to FEMA; you decide they are not creditworthy at all, not even a credit elsewhere test, and you say, "Go see FEMA and get a grant."

They go to FEMA and they come back, and say they say, "Well, FEMA has agreed to give me $10,000." There are some of those people that will then be a lot more creditworthy than they might have been before.

The question is: Do you have the authority not to shut the door in their face, as the chairman says as has happened to a lot of people? Do you have the authority then to make a loan to those people, one of the noncredit elsewhere tests?

Ms. **Engeleiter**. Senator, if I may, I would like to have my staff review that question and provide you with a response at a later date.

Senator **Bumpers**. Maybe we can look at that.

Senator **Hollings**. That is the way we heard it. There is no question in my mind. That is the end of the road for them.

Senator **Bumpers**. Maybe everybody who got through, but there might be some who might then become a lot more eligible than they were and could do whatever they wanted to do, replace their home or whatever.

Ms. **Engeleiter**. Yes; and again, if I might go back to the historical records since 1953, where you consider that these people who are applying for these small business loans had nowhere else to go, and 94 percent repaid the loans. I think that is quite a savings for the American people.

Senator **Bumpers**. It really is.

Susan, how quickly can you get this subcommittee an answer on this Virgin Islands program?

Ms. **Engeleiter**. We are very close to providing that.

Senator **Bumpers**. Are you?

Ms. **Engeleiter**. Yes; the Virgin Islands initially did not have a specific proposal; they just wanted to explore what we could do. They came back to us about 1 week ago with a specific way to structure the situation, and we responded, then, to say that it would indeed be legal. So we can respond to the committee.

FISCAL YEAR 1991 BUDGET REQUEST INCREASES

Senator **Bumpers**. Some of your new initiatives, particularly with the women's program and the surety bond guarantee program, those increases, I heartily concur in those.

Mr. Chairman, most of the cuts here are just the same thing that Ronald Reagan sent for 8 years and President Bush for the last two. [Laughter.]

Senator **Hollings**. Yes.

Senator **Kasten**. Like the increase in guarantee fees.

Senator **Bumpers**. We aren't going to raise fees on these loans by 2 percent or 5 percent. Can you see a businessman saying, "Can I have a $500,000 loan?" And they say, "We need $25,000 down for that loan."

We are not going to do it and we will never do it.

The elimination of these direct loan programs. There again they eliminate all the direct loan programs for the handicapped, for Vietnam veterans, for minorities, economic opportunity and then, of course, they raise the interest rate on disaster loans to the going rate.

Well, that is no disaster program at all. I mean, if anybody can pay the going rate to the Government, which is, what, 9 percent right now, they could probably get a loan. That still is a little bit of an advantage, but not much.

Senator **Hollings**. She testified last year that raising the fee from 2 to 5 percent would be a real fall-off in the number of small businesses. That was the response to the Senator from Wisconsin by Susan Engeleiter from Wisconsin. [Laughter.]

Senator **Bumpers**. She can't find that page number. [Laughter.]

Senator **Kasten**. He has got it outlined in yellow.

Ms. **Engeleiter.** Mr. Chairman, in my defense, if I might, that is why I politely suggested to OMB that we wanted an increase from 2 to 3 percent with this additional 1 percent paid for by the banks.

GUARANTEED LOANS

Senator **Bumpers.** There was one other question I want to ask Susan, because there has become a problem with the Farmers Home Administration on guaranteed loans. I am always getting calls from bankers who have made guaranteed loans; somebody defaults and they can't get their money. We have got one case in Arkansas. I guess it is still in litigation. Maybe I shouldn't talk about it, but we had a bank, for example, that loaned, I forget, $1,200,000, and when the company went under, they alleged the bank mismanaged the company but insisted they put in a new manager and all that sort of thing, and they got judgment. Not only did they not have to repay the loan; they got a judgment against the bank for about $4 million. Damndest thing I ever saw. [Laughter.]

Anyway, my question is: Are you getting much flack from banks who make these guaranteed loans about not paying when the borrower defaults?

Ms. **Engeleiter.** No; we are not getting any flack on our payment on defaulted loans. In fact, through new automation provisions we have dramatically increased the turnaround time on these requests from banks.

Senator **Bumpers.** Mr. Chairman, that about concludes all the questions I have.

Senator **Hollings.** Thank you, Senator Kasten.

7(A) LOAN LEVELS

Senator **Kasten.** I want to second what Dale was saying with regard to the guarantee fees. That is not going to happen, and your answer to me last year, you don't need to repeat that, I gather. But let me ask Susan, equally importantly, the administration is requesting no increase in the 7(a) loan authority for next year. When you look at how dramatically, the 7(a) loans have been increasing, are you confident that the number that you are requesting is going to be sufficient, particularly when you look back at last year when the 7(a) loan authority ran out early and we had to come back to reprogram funds for the 7(a) loans?

Should we get out in front of this curve and put out the dollars that are really going to be needed, or is there something going on here that would indicate to you that the dollars that you are asking for are, in fact, going to be sufficient?

Ms. **Engeleiter.** Well, Senator, the amount appears sufficient based on what we are doing so far this fiscal year. We have lent out about 45 percent of our funds. We are a little bit under target, where we should be if we were going to lend out our entire $3.2 billion appropriation. Based on what we are lending this year, the $3.2 billion that we have requested should be adequate for next year.

Senator **Kasten.** We are going to be looking at that, because we ought to put the dollars in there. We ought to be honest with one another and put the dollars that are needed in that program.

I have a couple of other questions, Mr. Chairman, which I will submit for the record. I thank you.

SMALL BUSINESS DEVELOPMENT CENTER PROGRAM

Senator **Hollings**. Very good.

We have the Frank L. Roddy Business Development Center down at the University of South Carolina. One-third of their clients are minority; and another 40 percent are women. The Federal return on investment is 7 to 1. They get $884,000 from SBA, $442,000 in cash from the State, and another $442,000 in-kind contributions for a total budget of $1,142,000.

If you come along, as you propose, to reduce the funding for these centers by $30 million in 1991 and then to $15 million and nothing thereafter, with the loss of the $834,000 they will just have to fold the center. What is the game plan here?

Ms. **Engeleiter**. The game plan is that based on what has happened historically; the State and private sector and the State and local governments have been significantly increasing their contribution to the SBDC's and we estimate that that will continue. The program will be there. In South Carolina, the match is about 2 to 1, private sector to Federal money, including local and State government contributions. We are anticipating that that is going to continue.

Senator **Bumpers**. Mr. Chairman, that is another case of saying that, "You all have been so good in coming up with one-half the money that we think we will let you come up with all of it."

Senator **Hollings**. I got the message. Read my lips. Raise your taxes. That is the plan.

SMALL BUSINESS INSTITUTES [SBI'S] AND SCORE

Senator **Bumpers**. There are two other programs, Mr. Chairman, just for the edification of the members of this subcommittee, one is called small business institutes, and one is called SCORE. SCORE is a program of $2.5 million. The reason I mention this, the people who testified on both these programs, I thought, were very impressive.

Frankly, I hadn't paid much attention to these programs, but these executives, for example, these retired executives do a dynamite job. They like to do it, and for example, one of their chief criticisms of the SBA, they said when Hugo hit the Virgin Islands, they got a call from SBA that said, "Pack your bags; go down and help these businesses in the Virgin Islands," and they got their bags packed and never heard where to report, and never got another call. In the SBI program, Dr. Don Bradley, who testified on that said that for $2.5 million, he made a computation—I forget how much it was—not exaggerated per hour that the Government gets the equivalent of $27 million in volunteer services, mostly from youngsters who are under the supervision of professors in the business schools of colleges and universities.

Most of them are in masters programs. The Government is getting a $27 million return. What was the per-man hour computation, do you remember? Six dollars?

At $6 an hour, the Government is getting $27 million on $2.5 million. They say they are only meeting about 30 percent of the requests they get, something like that. Those two programs might be worth looking at to increase a little bit.

Senator HOLLINGS. I am with them. I have worked with them, and I agree with your comment. I think we ought to increase them.

Senator KASTEN. Mr. Chairman, I want to agree with what Dale just said. There are also real opportunities in both of these programs that came out in that hearing in terms of working with the emerging democracies in Eastern Europe. There are some real opportunities with both this SCORE program and with this graduate student program that we want to involve the Small Business Administration. I think it is going to be important that we help them get involved in this thing because there is, as we discovered in some hearings, there is a kind of a turf battle going on between State and Commerce and SBA and other groups, and we have got a whole group of people here who can get involved in helping the emerging democracies in Eastern Europe. I think we have got to be sure that we expedite that procedure.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Very, very good. We will keep the record open for further questions and for your answers. Please provide them. Ms. Engeleiter, we appreciate both of you being here this morning.

Mr. ROSENBAUM. Thank you very much.

Senator HOLLINGS. Thank you.

Senator BUMPERS. Thank you, Susan.

Mr. Chairman, I am going to leave Legal Services Corporation to you this year.

Senator HOLLINGS. This is going to be a different act.

Senator BUMPERS. Do you think it is worth staying for?

Senator RUDMAN. No.

Senator HOLLINGS. Rudman has prevailed.

Senator RUDMAN. It will be a very calm hearing.

Senator BUMPERS. I hear they are asking for an increase. That in itself is something of a miracle.

Senator HOLLINGS. That is a good. sign.

[The following questions were not asked at the hearing, but were submitted to the Administration for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

DISASTER LOAN PROGRAM

Question: How many disaster loans were made in connection with Hurricane Hugo and the San Francisco Earthquake? How many of those loans were made to persons or businesses that would have been unable to obtain loans without SBA assistance? How many of the persons and businesses that received loans would have been able to qualify for those loans if the interest rate had been at the Treasury's cost of borrowing?

Answer: As of April 22, 1990, we had received 69,480 loan applications, and have processed 93.7% of them. Thus far, we have approved 37,306 loans for a total of $815 million. There have been disbursements of 26,305 of the approved loans in the amount of $258.8 million. We now anticipate that the total approvals for these two disasters will be $825-$850 million.

So far, approximately 91% of the loans were made at the 4% interest rate, which indicates a determination by SBA that the applicant did not have credit elsewhere available.

We are unable to respond to the last portion of this question with the information in our available records. In order to respond to this, all the loan case files for all loans where the payment term is 30 years or close to 30 years would have to be reviewed.

Question: Has SBA looked into the complaints reported in the news media concerning the amount of information SBA requires disaster victims to provide when applying for an SBA loan? Is SBA able to offer help to applicants who do not understand the applications or who have lost some of the documents needed to provide the requested information?

Answer: Yes, we have reviewed our requirements and do not believe they are, generally, any more difficult than would be required by any reasonably prudent lender who did not know the applicant. Of course, there are certain additional matters that SBA, as a government Agency, is required to request. These matters are in accordance with laws that we are responsible for administering, which non-government lenders do not have to administer. Some of them are follows:

- Do you have or have you ever had an SBA loan?
- Status of flood insurance?
- Any other federal loan?
- Been delinquent in any federal loan, contract or grant?
- Been convicted of a felony?
- Have you paid a representative to assist you with this application?

SBA is able to offer assistance. In every disaster situation, SBA conducts regularly scheduled workshops for home loan applicants. The workshops are well publicized and SBA encourages all home applicants to attend a workshop where they can receive individual assistance from SBA staff or a local volunteer in completing their application. In addition, in every physical disaster, SBA conducts workshops and meetings for business owners at which the applications and the process are discussed and individual questions are answered. Also, SBA maintains "800" telephone lines to its disaster offices which can be used to ask any questions an applicant may have.

SMALL BUSINESS DEVELOPMENT CENTERS (SBDCs)

Question: The Small Business Development Center Program currently reaches 47 states. Which 3 states do not have an SBA?

Answer: The Small Business Development Center Program currently reaches 49 states, Puerto Rico, the Virgin Islands and the District of Columbia. The total of 49 includes two states - Hawaii and Virginia - whose programs came on board this past year. Negotiations are actively underway to bring the final state, California, into the SBDC network.

Question: Please provide for the record a listing of the 54 SBDCs that shows their Federal funding, state and local funding, private funding, and total funding?

Answer: There now are 56 SBDCs nationwide, compared to 54 in FY 1989, the last year for which budget numbers are available. A listing showing these 54 SBDCs, their FY 1989 Federal funding and SBDC matching is attached.

SMALL BUSINESS DEVELOPMENT CENTERS 1/

	SBDC	FISCAL YEAR '89 FEDERAL FUNDING	SBDC MATCH
1.	Alabama	$ 1,098,500*	$ 1,390,644
2.	Alaska	200,000*	322,042
3.	Arizona	398,307	546,505
4.	Arkansas	623,392	701,544
5.	Colorado	477,275	482,123
6.	Connecticut	637,439	682,701
7.	Delaware	200,000*	211,822
8.	D.C.	815,710*	1,208,373
9.	Florida	2,756,000*	3,797,513
10.	Georgia	1,540,500*	1,540,500
11	Idaho	266,500*	266,548
12.	Illinois	2,355,271	2,355,271
13.	Indiana	668,680	732,541
14.	Iowa	825,500*	1,896,818
15.	Kansas	638,120	808,329
16.	Kentucky	1,033,500*	1,038,933
17.	Louisiana	1,034,090	1,182,609
18.	Maine	318,500*	1,340,447
19.	Maryland	375,000	652,431
20.	Massachusetts	1,354,246	1,354,246
21.	Michigan	2,390,000	2,701,100
22.	Minnesota	1,150,000	1,433,506
23.	Mississippi	696,448	724,688
24.	Missouri	1,318,473	1,773,359
25.	Montana	199,801	284,824
26.	Nebraska	442,000*	625,437
27.	Nevada	227,500*	227,500
28.	New Hampshire	260,000*	340,745
29.	New Jersey	940,409	1,125,445
30.	New Mexico	133,898	288,056
31.	NY (Downstate)	1,166,517	1,552,615
32.	NY (Upstate)	1,251,887	3,396,677
33.	North Carolina	695,804	695,804
34.	North Dakota	200,000*	252,808
35.	Ohio	1,135,230	1,959,860
36.	Oklahoma	673,188	866,368
37.	Oregon	741,000*	741,000
38.	Pennsylvania	3,386,734*	3,386,734
39.	Puerto Rico	466,900	687,354
40.	Rhode Island	266,500*	511,493
41.	South Carolina	884,000*	884,000
42.	South Dakota	200,000*	285,583
43.	Tennessee	1,002,182	1,209,909
44.	Texas (Dallas)	859,100	937,647
45.	Texas (Houston)	1,153,682*	1,153,682
46.	Texas (Lubbock)	468,650	593,083
47.	Texas (San Ant.)	425,629	512,300
48.	Utah	409,500*	618,551
49.	Vermont	200,000*	200,000
50.	Virgin Islands	181,178	192,660
51.	Washington	1,170,000*	1,170,467
52.	West Virginia	552,000	755,637

SBDC	FISCAL YEAR '89 FEDERAL FUNDING	SBDC MATCH
53. Wisconsin	1,326,000*	1,326,000
54. Wyoming	200,000*	474,040
	$ 44,390,340	$ 56,400,872
OSR Travel and Clearinghouse	350,000	
	$ 44,740,340	

Authorized funding level for FY 1989 is $45,000,000.

* SBDCs which have reached their statutory limitation.

1/ As of September 15, 1989

Question:	SBA proposes to reduce the SBDC funding by $20 million, to $30 million in FY 1991, and then to $15 million in FY 1992, and nothing thereafter. Does SBA propose to apply a 40 percent reduction uniformly to each SBDC, or just how do you plan to reduce the assistance to the SBDCs?
Answer:	We would reduce the ceiling for all SBDCs from the current level of $65 million to $30 million in FY 1991 and provide the same population distribution as mandated by law. This reduced cap will in effect reduce the level of federal funding to those schools currently at the ceiling. However, those schools who have just been added to the program, as well as whose funding level is below the adjusted ceiling could still receive increased federal funding in FY 1991. In addition, it is anticipated that many of the SBDCs will increase their private sector match to almost twice that of the current federal amount to help offset any reductions in federal funding.
Question:	Has SBA performed any study or even asked the SBDCs what would happen if the Federal Government were to reduce or discontinue its financial support of SBDCs?
Answer:	The SBA tracks the performance of each SBDC on a quarterly and annual basis and, also, monitors the federal and matching dollars which are put into the SBDC program. Additionally, we note those monies put into the program beyond the required match, and the use of volunteers. From all of this information, we have been able to ascertain that the SBDCs are continuing to find sources of funding other than the Federal government and that if this trend continues, then a gradual phasing out of federal funds could be effected with little

or no long-term impact on the individual SBDCs. This specific proposal has not been directly presented to the SBDCs.

Question: Would the SBDCs discontinue any of the services they are currently providing to small businesses?

Answer: This would be up to the individual SBDCs. Some might discontinue a particular service because they consider it a federal priority and no longer feel compelled to provide it. Others, particularly those which have not actively and continually sought other sources of funding, might not be able to find enough non-federal funds to make up for the phase-out of their federal monies.

Question: And, would they continue to effectively interface with SBA and its other programs?

Answer: We would expect total cooperation and coordination to continue. On the local level, the SBA District or Branch Office and the SBDC lead center or subcenter are all "players" in the small business and economic development arena. We would expect them to continue to interact. SBA works with numerous "partners" on the local, regional, and national levels that it does not help fund.

GUARANTEED FEES

Question: Since you testified at last year's hearing that raising the guarantee fee for 7(a) loans from 2 to 5 percent would be detrimental to the program and that hopefully the proposal could be reworked, why then have you once again proposed increasing the guarantee fee from 2 to 5 percent?

Answer: The proposal to increase the guarantee fee on the guaranteed loan program is part of a long-range goverment-wide program to transfer the cost of Federal programs from the general taxpayer to the direct recipient of the program and make the program self-sufficient. The increase from two to five percent will help offset the cost of providing financial assistance. The approval of this proposal would generate additional revenues for the Business Loan and Investment Fund and would eliminate the need for additional appropriated funds, above the current FY 1991 request. The three percent fee increase in the 7(a) program would only raise the monthly payments on the average loan by a nominal $75.

Question: Was this part of SBA's original proposal to OMB?

Answer: SBA's original FY 1991 proposal to OMB was to increase the fees on all 7(a) guaranteed loan programs to 3%. This proposal included the 2% currently authorized plus an additional 1% which would be borne by the participating bank.

Question: How much do you expect the demand for 7(a) loans to increase if the guarantee fee remains at 2% or decrease if the fee is increased to 5% as proposed?

Answer: We do not expect the three percent fee increase on the Section 7(a) business loans to have any adverse effect on the program. However, at this point we cannot project exactly what effect the increase will have on the demand for 7(a) loans.

Question: Have you requested sufficient guarantee funding authority and staffing to handle the workload that could result if the guarantee fee is not increased and the demand for 7(a) loans increases accordingly?

Answer: Our request of $3,200 million for General Business loans would be sufficient to handle the expected demand for 7(a) guaranteed loans. The FY 1990 guarantee funds usage as of the end of March 1990 (halfway through the FY) was 45%. This rate of usage, if continued into FY 1991, will allow for a small increase in demand.

Our current staff should be sufficient to handle these guaranteed loans. However, if additional staff is required we will redirect personnel from less priority activities.

SURETY BOND GUARANTEE PROGRAM

Question: What is the status of the Preferred Surety Bond Guarantee Program? About how many surety companies will participate in the preferred program in FY 1990 and what will be the number and dollar value of surety bonds guaranteed under this program in FY 1990?

Answer: Final regulations for the Preferred Surety Bond Guaranty (PSB) Program were published in the Federal Register on March 20, 1990. Participation in this program is expected to begin within the next month.

Three major surety companies have contacted SBA regarding participation in the PSB program. It is anticipated that they will sign a formal agreement within the next month. SBA program managers intend to allocate approximately $100 million for PSB participants in FY 1990, should the demand require this level of funding. The Agency request for total Surety Bond Guarantee funding for FY 1991 is $1.5 billion of which approximately $250 million is for the PSB program.

Question: What effect, if any, have the other changes to SBA's Surety Bond Guarantee programs had on the demand for SBA bond guarantees (e.g., the increase in the percentage of bond that SBA will guarantee on contracts under $100,000 or those awarded to socially and economically disadvantaged contractors, and the exception of 8(a) contracts from the contractor size limitation imposed on contractors obtaining SBA bond guarantees)?

Answer: In May 1989, the SBA Reauthorization and Amendment Act of 1988, P.L. 100-590, was implemented, thereby increasing the guarantee percentage for minority and small (under $100,000) contracts from 80% to 90%. The average guarantee percentage has increased from 80% to approximately 84% as of March 28, 1990. The Agency will review the effects of these changes on total guarantee authority usage at the end of FY 1990.

OFFICE OF INNOVATION, RESEARCH AND TECHNOLOGY

Question: Mrs. Engeleiter, in your statement you testify to the success of the Small Business Innovation Research Program. Our distinguished ranking minority member authored the Bill that established that program which directs a share of Federal R&D funds to small high-tech companies. We have held your reorganization proposal for this hearing. Please explain how you believe that this program is enhanced by taking it out of your office and transferring it to the Associate Deputy Administrator for Special Programs.

Answer: As you know, the Office of Small Business Innovation Research (SBIR) was attached directly to the Administrator's office when the program was created as part of the Small Business Innovation Development Act of 1982.

I have now proposed that the SBIR program report to the Associate Deputy Administrator for Special Programs, rather than reporting directly to me.

The reason for this proposal is simple. Given the breadth and scope of my responsibilities, it is not possible for me to directly oversee the day-to-day operations of a program. At the present time, SBIR is something of an orphan: It is the only program directly reporting to the Administrator. It's my intention to incorporate SBIR into the regular SBA structure, or the regular SBA family, if you will.

This proposal should not be interpreted as a "demotion" of the SBIR program. I consider this an excellent and very important program, one of the best, in fact, at SBA. The SBIR program is critical to our efforts to produce new technical innovations by U.S. small businesses, and to commercialize those innovations to make the American economy more competitive in the world marketplace. Since its inception, the SBIR program has resulted in more than $2 billion in Federal research and development resources for small businesses. This money has helped small businesses produce an extraordinary array of important new products. For example, in my speeches, I often cite the fact that Jessica McClure, the little girl who fell down the well in Texas, was saved by a high-pressure water jet produced by a small business as a result of the SBIR program.

Under the reporting relationship I have proposed, SBIR will be treated on an equal footing with the Agency's other key programs. The SBIR director will remain an Assistant Administrator. He will report to an Associate Deputy Administrator who reports directly to me.

This will assure that SBIR is given full and on-going representation on my Senior Management Team, and that the program is an intrinsic part of our deliberations on Agency priorities and budget needs.

SMALL BUSINESS INVESTMENT COMPANIES

Question:	How much has SBA lost as the result of SBIC failures during the last five years?
Answer:	Over the past five years (FY 1985-FY 1989), SBA's net losses for SBIC loan debentures totaled $10,502,430.
Question:	How much does SBA estimate that it will lose with regard to those SBICs currently in receivership?
Answer:	Our latest loss study as of 9/30/89 showed, out of $1.2 billion outstanding, $431 million is anticipated to go into default or liquidation which will result in additional estimated losses of $167 million.

Question: The SBA budget states that legal issues involving SBIC failures are very complicated. How much funds and staff time has SBA been devoting to SBIC cases?

Answer: As you have indicated, legal issues involving SBIC failures are very complicated. This is due in part that some SBIC's have as many as 30 individual debentures attached to them. There are currently four staff years being devoted to the liquidation activities and our FY 1991 budget submission includes a request for seven additional positions for this activity.

Question: Has SBA, either its program offices or OIG, determined the primary reasons for the SBIC failures and the corresponding regulatory violations and fraud? If so, what actions have been taken to address these problems and to prevent similar problems with existing SBICs?

Answer: Most of the SBIC defaults are due to financial difficulties. Situations indicating fraud or serious regulatory violations have been referred to SBA's Office of Inspector General and/or are being litigated by the Agency. A management study of liquidation and on-going program administration was commissioned by SBA's Administrator and conducted by an outside contractor. Essentially, the study recommended more timely and systematic liquidation actions as well as closer and more uniform monitoring of operating licensees. Implementation plans have been prepared to carry out the study recommendations, which indicate some additional resources will be needed to detect and correct troubled SBICs at an early stage.

Question: How many SBICs are currently licensed by SBA and what is the Federal Government's financial exposure as a result of these recensions?

Answer: As of April 20, 1990 there are 401 active licensees with $1.18 billion of SBA-provided funds and $1.91 billion of private capital. These numbers include the 135 301(d) or "Specialized" SBICs with $300.8 million of SBA leverage against $202.9 million of private capital. In addition, there are 170 licensees in liquidation with $486.2 million owed SBA. The Agency has already honored its guarantees on this debt and expects to recover over half of these losses through liquidation of the SBICs assets.

TOTAL EXPOSURE ON ALL SBA PROGRAMS

Question: What is the total number and dollar value of SBA direct and guaranteed loans currently and how does this compare to 5 years ago? How many employees does SBA have involved with loan servicing currently and how does this compare with 5 years ago?

Answer: The loan portfolio at September 30, 1989 contained 242,000 loans for $16.5 billion. This includes 32,000 direct business loans for $3.1 billion, 134,000 disaster loans for $3.0 billion, and 76,000 guaranty business loans for $10.4 billion

In comparison, the loan portfolio at September 30, 1984 contained 402,000 loans for $17.3 billion. This included 53,000 direct business loans for $3.7 billion, 264,000 disaster loans for $5.0 billion, and 85,000 guaranty business loans for $8.6 billion.

SBA Loan Portfolio
($ in billions)

	FY 1984 @ 9/30/84		FY 1989 @ 9/30/89	
	Number	Dollars	Number	Dollars
Direct Business Loans	53,000	$ 3.7	32,000	$ 3.1
Direct Disaster Loans	264,000	5.0	134,000	3.0
GTY. Business Loans	85,000	8.6	76,000	10.4
Total	402,000	$17.3	242,000	$16.5

The permanent employment level in the Agency at September 30, 1989 was 3,645 personnel. The employment level in portfolio management was 614 in our field offices, plus a small staff in Washington.

In comparison, the permanent employment level in the Agency at September 30, 1984 was 3,910 personnel. The employment level in portfolio management was 761 in our field offices, plus a small staff in Washington.

Question: Does SBA have staffing standards for loan servicing (i.e., the average number/dollar value of loans an employee should be assigned)? If not, how can SBA management know whether it has sufficient staff or whether they are located in the offices with the greatest need?

Answer: Each office is assigned a specific ceiling each fiscal year. The personnel resources can be redirected to the highest priority activities throughout the year to meet the workload.

Question: Does SBA have plans to issue guidelines to its field offices to assure proper monitoring of bank serviced loans?

Answer: The field offices follow procedures and guidelines in the SBA SOP-50-51, Loan Liquidations and Acquired Property, to monitor bank serviced loans.

Question: Has SBA assigned adequate staff to administer the new Preferred Surety Bond Guarantee Program?

Answer: The Preferred Surety Bond Guarantee (PSB) Program is designed so as to require minimal SBA staffing during the pilot phase. The pilot runs through FY 1992, and we expect participation by three to five sureties. At present, we are using personnel from the program, legal, accounting, data processing and auditing areas as necessary to complete logistical arrangements for the new program. We are also considering the establishment of one or two additional professional positions, depending upon enrollment of participating sureties.

PROCUREMENT ASSISTANCE

Question: What are SBA's estimates of the potential savings in procurement costs attainable with the establishment of the breakout centers at these 4 locations?

Answer: It is estimated that four additional breakout teams would generate between $12.0 and $40.0 million in savings once they become established.

Question: How soon would SBA establish these breakout centers and begin realizing savings at these locations?

Answer: The SBA will proceed to hire qualified personnel to staff these new breakout centers as soon as authority is received. It is experted that personnel will be on board six to none months after the go - ahead is received. It will take up to two years to begin to realize significant savings because savings are only realized after the broken-out items are purchased.

PASS SYSTEM

Question:	How many requests for PASS data were received last year? Please provide a breakout by Federal agency.
Answer:	Requests for PASS data can be measured only in the number of times each agency logged onto the system. These are called sessions. Where agencies do not subscribe to direct access, they may request the data from the local SBA Regional office. Multiple requests may be fulfilled within any given session. A report on the number of sessions by Federal agency for FY 1989 is attached.
Question:	How many small business firms are there in the PASS Database?
Answer:	As of April 23, 1990, there were 167,088 small businesses registered in PASS.

PASS Usage for FY 1989

Federal Agency	Sessions	Hours of Use
ARMY	109	49
ARS	22	11
CONGRESS	3	2
DCA	1	2
DHHS	26	8
DLA	242	94
DOC	389	242
DOE	192	50
DOED	36	17
DOI	578	161
DOJ	16	10
DOL	61	22
DOT	161	96
EPA	26	12
FAA	11	3
FBI	32	21
FCI	2	1
FRB	4	4
GSA	121	44
HHS	165	81
IRS	35	16
NASA	107	37
NAVY	38	17
NFS	209	41
NRC	32	10
NY STATE	14	8

OPM	40	28
OTS	1	1
SBA BOPCR	1034	324
SBA CO	448	376
SBA PCR	661	259
SBA REG01	178	210
SBA REG02	152	103
SBA REG03	551	280
SBA REG04	336	267
SBA REG05	99	69
SBA REG06	438	271
SBA REG07	283	136
SBA REG08	318	114
SBA REG09	380	116
SBA REG10	258	112
SSA	192	52
TREAS	1	1
TREASURY	61	23
TVA	97	26
USAF	71	19
USCG	55	21
USDA	1075	236
VA	72	33
Grand Total	9433	4136

Question: What kind of outreach efforts are envisioned by SBA to increase the number of firms in the system to the 400,000 goal established by SBA? And, how much will these outreach efforts cost?

Answer: An aggressive outreach effort is planned using vendor files of both Federal agencies and large prime contractors. SBA's Office of Advocacy has recently obtained a license for the most recent Dunn & Bradstreet file. This resource will also be utilized for selective outreach purposes. It is estimated that over a three year period, an average of 100,000 outreach mailings per month will be required to attain our goal. This effort will cost $250,000 a year during that timeframe. This includes all outreach, the addition of new firms to the data base, and the annual update, and the cost of printing the necessary forms. Postage costs of $190,000 per year are expected.

We recognize that the system is really only as good as its reputation. An advertising campaign is planned to increase awareness, availability, and name recognition. A multi-faceted professional effort is envisioned at a cost of approximately $25,000.

Question: What are the amounts of the proposed increased in the PASS application and user fees? (i.e., what are the current amounts and the proposed amounts)?

Answer: It has been proposed that a new user fee of $10 be established for registration and each annual update. Additionally, it has been recommended that the usage fee for direct access to PASS be increased from $24 per hour to $50 per hour with a minimum billing unit of one hour per month.

Question: What assurances does SBA have that the increases in application and user fees will be cost effective and not result in an overall reduction in the usage of PASS and thus a decrease in revenues?

Answer: The SBA believes that the quality of data in the system, the number of firms registered, and the expansion of the PASS system into a national small business directory are all incentives that will encourage increased usage of the PASS system even with the application fee and the increase in user fees.

Question: Does SBA have any information on how many of the firms in the database have received an opportunity to bid (e.g., received a request for proposal) on at least one federal procurement as the result of its being in the PASS database?

Answer: Unless an organization uses PASS exclusively, the Federal procurement process is so complex that it is impossible to determine systematically whether a firm's participation in PASS has resulted directly in that firm receiving an RFP. In fact, the Forest Service in Portland, Oregon does use PASS exclusively and are very pleased with it. They control procurements for some 20 National Forests.

We know that a minimum of 11 percent of the PASS participants have received Federal contracts. Our Advocacy office developed this figure by using the DUNS number to compare PASS with the Federal Procurement Data System file. This number is considered very low since we are just completing the process of capturing the DUNS number in PASS. This comparison will be repeated shortly so that the comparative results might be studied. Knowledge of the effectiveness of PASS is based in the voluntary cooperation of users. Users are encouraged to report all such activity, including contract awards, to the SBA. This is occasionally done and the enthusiasm for the system is very high.

Several organizations have studied PASS and made "corporate" decisions as to its use. The Defense Logistics Agency (DLA) recently completed a six month study of PASS in their Boston region. Their conclusion was to encourage PASS to be used by all of their regions. The Department of the Interior (Office of Small and Small Disadvantaged Business Utilization) has adopted PASS as their system of choice for all 62 of DOI buying centers. This is a staff recommendation but reflects the degree of confidence the OSDBU's office has in PASS.

NATIONAL SMALL BUSINESS DIRECTORY

Question: Has SBA decided to expand the PASS into a National Small Business Directory? And if so, is this expansion of the PASS the first step in that process?

Answer: Yes, this is the first step of expanding PASS into a national small business directory. We are proceeding with this expansion which is a program objective that was approved by the SBA Administrator.

Question: What are SBA's estimates of (1) the developmental cost to expand the PASS into a National Small Business Directory and (2) the Annual Cost to operate the PASS as a National Directory?

Answer: Developmental costs would include those enhancements designed to make PASS acceptable to other agencies. Several major enhancements are now being implemented for that very reason. These enhancements include: 1) the addition of new data fields that have been requested by users, e.g. Contractor and Government Entity (CAGE) code, Rural County Indicator, Congressional District, disabled veteran status, Metropolitan Area codes, etc.; 2) Special procedures to increase the probability of minority and women-owned firms being selected and displayed by the system; 3) develop the capability to identify the number of times a firm's record was selected and displayed, and by whom. These upgrades are currently being implemented at a cost of $48,000.

Future enhancements could add data on: prior contract experience; annual certifications and representations as to size, minority, WOBE, veteran status; debarment/suspension information. It is estimated that these developmental costs would approximate no more than $150,000-$175,000 a year through FY 1993. This would include all programming, testing, implementation, documentation and changes to the user guide. Any associated costs for storage of data, communications equipment etc. would be extra.

The FY 1991 budget requests $1,443,000 for the PASS program. This amount will cover the day to day cost of operating PASS as a national directory with a 400,000 record data base and 650 direct access users. This amount includes outreach and developmental costs in order to increase the number of firms in the data base and day to day costs for normal operations and maintenance.

Question: Have Federal agencies that are currently maintaining their own listings of small businesses indicated a willingness to use PASS and discontinue maintaining their own listings?

Answer: In FY 1986, the Forest service in Portland, Oregon elected to use PASS exclusively and are very pleased with it. They control procurements for some 20 National Forests. Any contract to small business from this agency is a result of PASS participation. This is a situation which the Forest Service initiated.

No formal effort has been made to approach Federal agencies with this question. However, our experience is that agencies' use of mailing list application systems is varied. They range from very informal to very sophisticated. We do not expect immediate participation from agencies with sophisticated integrated systems. However, it is anticipated that as PASS grows and is refined, the larger agencies will appreciate its benefits and gradually increase their involvement. It is where informal or relatively unsophisticated systems are in use that PASS can represent an immediately viable alternative. It is estimated that this latter group actually represents a significant percentage of Federal procurement offices. The large sophisticated systems can easily become self-serving and inbred. As a result, strong competition is reduced. PASS provides a data base which is updated daily with new firms while uninterested or defunct firms are deleted. This means that all users will benefit from the opportunity for maximum competition with the availability of both new and previously listed firms.

We are confident that many of the agencies with less sophisticated systems would adopt PASS relatively quickly and discontinue use of their existing lists. We believe that the other agencies would follow in time.

COMPUTER SERVICES

Question: SBA's budget estimate for FY 1991 includes $3.5 million for the purchase of computer services, either through a commercial contract or a cross-servicing agreement. The budget indicates that competitive bids had been received and that SBA was in the process of awarding a contract. What was the amount of the final contract for computer services?

Answer: A contract was awarded to the EDS Corporation on March 9, 1990 for $5,455,316. The contract was awarded for one year with options for six additional years. EDS has provided a fixed price cost for each option year which varies only when SBA requires supplemental access to an IBM facility. With access to an IBM facility, the average fixed price cost per year for full scale operations is $6,375,897. Without access to an IBM facility the average fixed price cost per year is $5,022,897.

Question: A similar request for computer services to replace the mainframe computer was contained in last year's budget. What was the reason for the delay in awarding this contract?

Answer: Since 1985, the SBA has requested funding to replace its 1980 vintage UNISYS 1100/84 mainframe computer. In 1988, we decided that funding in the amount necessary to replace the computer would not be forthcoming. Alternative solutions were considered, including a cross-servicing agreement with the U.S. Department of Agriculture's Fort Collins Computer Center. It was then determined that it would be more prudent to first obtain formal cost pricing from the private sector for the required services. A request for proposal was prepared and a full competitive procurement for ADP services under the GSA mandatory Teleprocessing Services Program was conducted. Copies of the RFP were sent to various Federal agencies, including USDA, which are listed by GSA as offering ADP Sharing arrangements. There were no responses from Federal agencies. There were three responses from private firms. Technical and cost evaluations were completed, a demonstration benchmark was conducted with the apparent winner, and a contract was awarded to EDS Corporation.

CENTRAL OFFICE MOVE

Question: The FY 1991 request includes $4,189,000 for the consolidation of the Central Office. Where will the new SBA Headquarters be located.

Answer: The new SBA Headquarters will be located at 3rd and D Streets, SW.

Question: How does square feet SBA will occupy in the new building compare to the amount at 1441 L Street, N.W. and the 5 satellite locations to be consolidated in the new building?

Answer: The present building at 1441 L Street, N.W. plus the 5 satellite locations amount to 214,319 square feet. The new building is 204,300 square feet.

Question: The increase for the move includes $1,399,000 for dual occupancy of buildings during the transition phase of the move to the new building. Could not that cost be avoided by better scheduling of the movements to the new building?

Answer: The logistics of moving from six locations to one as well as the adjacencies caused by the consolidation dictate the planned moving over a six month period. The effect is the same as six lanes of traffic merging into one. It causes a traffic backup. By phasing in over this time frame, disruption to program delivery is minimal.

Question: Who else will occupy the new location in addition to SBA?

Answer: Negotiations for a third floor tenant, as yet undisclosed, are in progress. Currently, the National Council for the Aging occupies the entire second floor. The first floor will house commercial activities and the day care facility as well as the SBA Information Desk.

Question: The 1991 request includes $300,000 to remodel "special needs" space. Why isn't this being taken care of in the construction of the building?

Answer: Special needs are the adjustments necessitated as a result of program changes that have occurred since the project began. Increased staffing changes and the redesign of that space for areas such as MSB P.L. 100-656, International Trade increases, etc.

Question: The 1991 request provides $150,000 for extra guard services at the new building. How is SBA currently paying for guard services at the central office and the 5 satellite locations?

Answer: SBA currently reimburses GSA for contract guard service at the Central Office location and reimburses the Federal Mediation and Conciliation Service at 2100 K Street for a prorata share of the Contract guard service. The remaining locations do not have guard service.

Question: How many offices in the new building will come with private bathrooms and how many of those will have shower facilities? How many kitchens or cooking facilities will be part of the new offices?

Answer: Two offices will be furnished with private toilets and sinks. They are for the Inspector General and the Chief Counsel for Advocacy. One office will come with private toilet, sink and shower. This is for the Administrator. These upgrades are authorized by FPMR 101-17.308-1 Standards for Executive schedule personnel.

The space will have a small kitchen for the Administrator as authorized by the regulation previously cited, food preparation activities will be available in the deli-bar as provided by the Randolph-Shepard Act, and a beverage preparation unit and refrigerator will be provided in the Agency Conference Center.

INTERNAL CONTROLS REVIEW

Question: Does SBA perform internal control reviews of its regional and central (headquarters) offices and the banks servicing SBA guaranteed loans? If not, why?

Answer: The Office of Program Analysis & Review administers a centralized computer based system of internal control reviews. This system is used by the Agency to ensure district offices are adhering to prescribed policy and procedures. While this computer based system of internal controls currently focuses on SBA district office operations (as mandated by previous SBA Administrators), the Agency is currently evaluating the feasibility of expanding the system to programs administered at the regional and Central Office levels.

With respect to formal Internal Control Reviews and Risk Assessments, as required by the Federal Managers' Financial Integrity Act and OMB Circular A-123, SBA Central Office program managers schedule and conduct internal control reviews as prescribed. In addition, program heads and regional administrators prepare a yearly letter to the Administrator highlighting the results of internal control reviews and any material weaknesses.

With respect to banks servicing SBA guaranteed loans, SBA field offices are required to visit these banks yearly and conduct reviews of how well the bank is adhering to SBA prescribed controls and procedures. The results of these reviews are written up and maintained in the district office and are in turn reviewed by CICR team members conducting internal control reviews of SBA districts.

Question: What does SBA do to insure that the banks servicing SBA guaranteed loans have adequate internal controls to prevent fraud, unauthorized use, etc. of loan proceeds or collateral?

Answer: The Office of Inspector General performs a small number of audits (about 5 per year) of banks and non-bank lenders servicing SBA guaranteed loans to determine whether they have adequate internal controls to prevent fraud and unauthorized use of loan proceeds and collateral. In FY 1989, the OIG began a series of audits of lenders who participate in the preferred lenders program. Those audits reflect varying degrees of adherence to SBA rules and regulations by lenders. For example, a recently issued report on the activities of two lenders in Florida disclosed that the lenders were not following SBA's rules and regulations in the origination of 17 of 47 loans reviewed which were selected based on a judgmental sample. Also, one lender was charging borrowers a prohibited loan origination fee through an affiliate company. The OIG made 10 recommendations, including some to strengthen internal controls.

The OIG plans to increase its audit coverage of SBA guaranteed loans in FY 1991.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

SBIR REORGANIZATION

Question: The Office of Innovation, Research and Technology is not a large operation; it consists of only 10.5 positions and $1.2 million. It has become successful precisely because it has been lean and efficient, it has not become bureaucratized - and it can advocate the SBIR program with the full authority of the Administrator. As you know, many of the agencies required to provide research contracts to small business have not complied enthusiastically with the law.

I guess my question is, why change something that has been so successful? Isn't it in the interest of the Administrator to ensure that this program is successful?

Answer: As you know, the Office of Small Business Innovation Research (SBIR) was attached directly to the Administrator's office when the program was created as part of the Small Business Innovation Development Act of 1982.

I have now proposed that the SBIR program report to the Associate Deputy Administrator for Special Programs, rather than reporting directly to me.

The reason for this proposal is simple. Given the breadth and scope of my responsibilities, it is not possible for me to directly oversee the day-to-day operations of a program. At the present time, SBIR is something of an orphan: It is the only program directly reporting to the Administrator. It's my intention to incorporate SBIR into the regular SBA structure, or the regular SBA family, if you will.

This proposal should not be interpreted as a "demotion" of the SBIR program. I consider this an excellent and very important program, one of the best, in fact, at SBA. The SBIR program is critical to our efforts to produce new technical innovations by U.S. small businesses, and to commercialize those innovations to make the American economy more competitive in the world marketplace. Since its inception, the SBIR program has resulted in more than $2 billion in Federal research and development resources for small businesses. This money has helped small businesses produce an extraordinary array of important new products. For example, in my speeches, I often cite the fact that Jessica McClure, the little girl who fell down the well in Texas, was saved by a high-pressure water jet produced by a small business as a result of the SBIR program.

Under the reporting relationship I have proposed, SBIR will be treated on an equal footing with the Agency's other key programs. The SBIR director will remain an Assistant Administrator. He will report to an Associate Deputy Administrator who reports directly to me.

This will assure that SBIR is given full and on-going representation on my Senior Management Team, and that the program is an intrinsic part of our deliberations on Agency priorities and budget needs.

SBA Disaster Loans

Question: During fiscal year 1990 you are expecting to provide over $900 million in loans under the Disaster Assistance program. Obviously a large percentage of these loans are associated with the California earth quake and the effects of Hurricane Hugo.

The budget request for the Disaster loan fund for 1991 includes bill language to limit lending to $350 million. If we accept such language, and another large disaster hits, we'd be required to modify this language in subsequent legislation which in turn could cause a delay in loan processing. Why is this statutory cap being requested?

Answer: Due to the historical differences in the number and magnitude of disasters from one year to another it is nearly impossible to accurately forecast disasters. The level of fiscal resources needed for FY 1991 can, therefore, be subject to constant revision throughout the year. We are requesting resources based on historical requirements, not on the unique disaster activity that has occurred in FY 1990. However, if FY 1991 becomes a year of large disasters, we may have to request additional resources to respond to the disasters.

SBIC Program

Question: SBA is proposing a decrease in guaranteed loan levels from approximately $4 billion in 1990 to $3.8 billion in 1991. The largest decrease would come in the Small Business Investment Company program, which would be reduced from $246 million to $100 million. What is the justification for such a large decrease in this program.

Answer: The FY 1990 appropriation for SBIC guarantees was $246.0 million. However, SBICs used only $50.2 million of their guarantee authority during FY 1989 and have used only $26.6 million of guarantee authority during the first two quarters of FY 1990. Hence, the FY 1991 request of $100.0 million of guarantee authority seems reasonable.

Veteran's Outreach

Question: The SBA has $500,000 to assist veterans in efforts to establish and run small businesses. Earlier this year the Northern White Mountain Chamber of Commerce in Berlin, New Hampshire, submitted an application to provide educational assistance to veterans who currently own or are considering owning a small business. SBA reviewed the proposal and found it meritorious, but did not have sufficient funding to support all the applications it received. The agency also encouraged the Northern White Mountain Chamber of Commerce to resubmit its application in 1991.

The North Country of New Hampshire is not as strong economically as the rest of the State. Therefore, can I have your assurance you'll give this proposal every consideration if it is resubmitted in the current fiscal year?

Answer: While the FY 1990 VET grant proposal submitted by the Northern White Mountain Chamber of Commerce, had many excellent features, it was not among those selected. We have suggested that they resubmit their proposal when the new FY 1991 Request for Proposal (RFP) is issued, probably in September or October. In addition, in a letter dated March 9, 1990, we provided specific recommendations for future proposals. A copy of the RFP will be mailed to the Chamber as soon as it is available.

We will give a resubmission by the Chamber every consideration and will be happy to answer any questions they have with regard to submitting the most competitive proposal possible.

Inspector General

Question: In 1990 we established a separate appropriations account for the Office of Inspector General in accordance with legislation originating in the Committee on Governmental Affairs. The 1991 budget request for the Inspector General totals $9.9 million - a 33% increase over the funding level of $7.4 million for the current year. While we obviously want to support our Inspector General, that is a significant increase. Does the size of this increase indicate that the IG did not receive sufficient resource when he was part of the salaries and expenses account for the agency, or that new responsibilities have been given him, or that the establishment of a separate appropriations account is causing unwarranted growth? What is the justification for the increase?

Answer: The increase in the OIG budget is part of the Administration's efforts, across many agencies, to bolster resources in an attempt to eliminate waste, fraud and abuse.

The FY 1990 appropriation of $7.4 million was provided by straight-lining an estimate for actual obligations in FY 1989. It did not appropriate the amount that was requested.

The FY 1991 budget request specified that $1,764,000 of the increase is for adjustments to base and an increase of 28.0 FTE. The remaining $700,000 of the increase is for programmatic changes in the relocation, travel, and other contracts categories.

At the current level, our auditors are able to spend approximately 10% of their time, or 2 days per month, on the road performing audits. The requested level for travel, given the nature of audit work as well as general practice within the audit community, would allow them to spend 25% of their time on-site, or 1 week per month. Our funds for other services are used primarily for employee background investigations performed by OPM and audits of government contractors performed by DCAA, HHS, or other agencies.

With enactment of a separate appropriation for the OIG in FY 1990, the IG has become responsible for providing full funding of all related operations including relocation of employees, absorption of pay raises, increased travel requirements and contracts as a result of workload increases.

QUESTIONS SUBMITTED BY SENATOR ROBERT W. KASTEN, JR.

SMALL BUSINESS INSTITUTE PROGRAM

Question: Ms. Engeleiter, several weeks ago, the Small Business Committee held a hearing that reviewed SBA's Small Business Institute program. I was impressed with the hands-on assistance that college faculty and students are providing to small businesses nationwide. There are twelve different university-based Small Business Institutes in Wisconsin. There was concern within the Committee that the SBI program might not be receiving adequate funding and oversight from

SBA. Can you tell me how much SBA is planning to allocate to the SBI program in FY 1991, and how that amount differs from recent years? As a follow-up, do you plan any change in the fee which universities are allowed to charge businesses for doing case-studies on their businesses?

Answer: The actual expenditures for the SBI program for the last four Fiscal Years are:

FY 1986 - $2,795,753
FY 1987 - $2,778,107
FY 1988 - $2,716,584
FY 1989 - $2,527,654

The estimated for FY 1990 is $2,490,000 and the requested for FY 1991 is $2,490,000

The Universities do not currently charge any fee to the business clients. The SBI schools have opposed any such fee structure in years past when the Administration has recommended such fees.

Currently, SBA pays a fee of $400.00 for each case assignment. There has been some talk among the SBI schools that this should be raised. The Agency has no current plans to increase the amount. Such increase under level funding of the program will only decrease the number of businesses that the SBI program can serve.

INTERNATIONAL TRADE

Question: Ms. Engeleiter, as you know, these elements - outreach and customized information - are a major part of an international trade program for small businesses being developed by St. Norbert College in DePere, Wisconsin. I would appreciate hearing your views on the role that SBA can play in the area of international trade and how you feel about the St. Norbert program for export promotion and economic development that is being developed in partnership with SBA and small businesses in the state.

Answer: The U.S. Small Business Administration (SBA) has an important role to play in the area of international trade, particularly in the areas that you mention: outreach, information and technical assistance. SBA's international trade program is presently being enhanced because of new responsibilities assigned to it through the Omnibus Trade and Competitiveness Act of 1988.

We at the SBA see the mission of our international trade program to encourage small business exports, and to educate and assist those small businesses which seek to export. The SBA performs this mission through a variety of programs, working in close association with other Federal agencies, such as the Department of Commerce, the Department of Agriculture, and the Export-Import Bank, as well as state and local governments, academic institutions and other trade-related organizations and associations.

The SBA has an ongoing outreach and training effort. We organize and cosponsor international trade training seminars and workshops in every SBA district. In FY 1988 and FY 1989, the SBA organized or cosponsored, almost 1,200 export training programs, with around 60,000 participants, often in cooperation with the Department of Commerce, state and local agencies, and private organizations, These events are spreading the word among America's small businesses that the world is their market, and helping to get them started in the international marketplace.

The SBA also provides hands-on counseling for small businesses, including the various aspects of international trade. Counseling is performed largely through the Service Corps of Retired Executives (SCORE) -- experienced retired businessmen who volunteer their time and expertise to help other small business persons. The Small Business Development Centers (SBDCs) network, located on college campuses across the country, also provides counseling services. Furthermore, SBDCs can help a small business perform trade-related activities such as overseas market research and development of marketing plans. The SCORE and SBDC networks have performed over 9,800 export counseling cases during the last two fiscal years.

Outreach and education is also furthered by the SBA through the development and distribution of publications on international trade. Almost 80,000 copies of the SBA publication Exporter's Guide to Federal Resources for Small Business have been distributed since FY 1988, and a third edition is presently being developed. This guide presents an overview of the international trade programs of all Federal agencies involved in export promotion and assistance. A companion volume, The World Is Your Market: An Export Guide for Small Business, provides basic instruction in the how-to of exporting. Other SBA trade publications include directories of local trade assistance resources on a state-by-state basis, and fact sheets on regional trade and particular markets, such as Canada. The SBA also offers the

Export Information System (XIS), which provides a preliminary foreign market research tool. XIS lists the top of imports of each country, as well as the top import markets for particular products.

Other SBA activities in trade promotion include cosponsorship with the Department of Commerce of Matchmaker trade delegations. These trade missions take small businesses from selected industries overseas to promising markets, where they meet with potential foreign buyers, agents and distributors. The SBA also offers financial assistance programs for small business exporters.

As you have mentioned, "customized" information can be very important in assisting a small business to enter a particular market with a particular product. Local organizations are often able to tailor information and services more readily than a Federal agency with a national orientation. This allows them to better meet the needs of local businesses, and to work more closely with them.

The program which St. Norbert is planning will include an information center, where local businesses will be able to obtain detailed and current information on overseas markets and trade opportunities, with access to on-line data bases. The information center will be able to conduct research and provide advice to businesses interested in exporting. It will also provide a variety of seminars, workshops, lectures and continuing education courses on exporting and international affairs. Furthermore, business persons will be able to enroll in St. Norbert's established courses in foreign languages and cultures.

I believe that this program will be a valuable resource for businesses in Wisconsin. The international center will offer small businesses the opportunity to develop international expertise through education and training, and to obtain current trade information for export development. With a particular focus on local and regional industries, St. Norbert College would be able to provide services which are responsive to the particular needs of the businesses in its area. By helping to increase exporting by area businesses, St. Norbert College will also promote the overall economic development of the region.

LEGAL SERVICES CORPORATION

STATEMENT OF GEORGE WITTGRAF, CHAIRMAN

ACCOMPANIED BY:

JOHN ERLENBORN, VICE CHAIRMAN

TERRANCE WEAR, PRESIDENT

JOANNE GARVEY, CHAIR, AMERICAN BAR ASSOCIATION'S STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

F. WILLIAM McCALPIN, NATIONAL PRESIDENT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

INTRODUCTION OF ASSOCIATES

Senator HOLLINGS. The subcommittee will now hear testimony on the 1991 budget request for the Legal Services Corporation. Appearing on behalf of the Corporation is the new Chairman, Mr. George Wittgraf, the new Vice Chairman, Hon. John Erlenborn and the President until June 30 of this year, Mr. Terrance Wear. Also appearing before the subcommittee will be Ms. Joanne Garvey, chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants; Mr. F. William McCalpin, the national president of the National Legal Aid and Defender Association.

BUDGET REQUEST

The 1991 budget request of $343 million for legal services is unique in more than one aspect. It is a significant increase and represents what I hope will be a period of rejuvenation.

First, the budget recommendation of $343 million provides $26.5 million or an 8.3 percent increase for legal services for fiscal year 1991. This is the first increase recommended in the last 6 years.

The budget request also includes funding for the regional training centers, State and national support centers, and other support services vital to the delivery of legal assistance to the poor which has been eliminated in previous budget submissions. I want to welcome the witnesses and note this is the first group we have had that has been in favor of legal services since Justice Powell appeared before this subcommittee. I yield to Senator Rudman.

Senator RUDMAN. I think what I would suggest, Mr. Chairman, is that we let everyone do their opening statements in whatever form they wish and I have got just a few questions, and Senator Kasten may have an opening statement.

Senator HOLLINGS. Bob, do you have an opening statement?

Senator KASTEN. I don't have an opening statement, Mr. Chairman. Thank you.

Senator HOLLINGS. Very good. Mr. Chairman, we are delighted to hear from you, sir.

OPENING STATEMENT OF CHAIRMAN WITTGRAF

Mr. **WITTGRAF**. Thank you, Mr. Chairman. I have no prepared remarks; a few brief remarks, and the Vice Chairman of our Board, Mr. Erlenborn, may have a few remarks, as well. I think Mr. Wear, as President of the Corporation, does have a prepared statement and a few remarks.

Most of us were just appointed at the end of January as recess appointees by the President, 9 of the 11 of us. John Erlenborn has the benefit of about another 2 months of recess appointment and 1 other of us was appointed as a recess appointee earlier in 1989, so that John and I come before you as 2 of 11 recess appointees. If all goes according to plan, I guess, it appears likely that we will be nominated, hopefully, by early June as nominees subject to the Senate's confirmation for the board of directors.

We have, in the brief time that we have been recess appointees, had just three meetings. The first meeting was on February 12, which was the first time we had been together at all. We met then again for 2 days on March 26 and March 27.

I think it is fair to say that the 11 of us are just at the beginning of our respective learning curves as far as the Legal Services Corporation and its programs are concerned. Most of us come with backgrounds that have some involvement in legal services, but not in terms of the national program and really come with few axes to grind or oxes to gore or oxen to gore, I guess that is.

We come, rather, at the encouragement of the President, members of this body and other groups, such as the American Bar Association, to try to move forward with the embattled Legal Services Corporation. I think that has been our attempt.

In that regard, we did, on March 26, have a day full of hearings when we heard from some 40 witnesses talking about the matter of delivery of the Legal Services Corporation and the legal services programs.

That certainly has helped us in our learning effort. One of the things that we did learn that day was that there is a very substantial unmet need for the provision of Government-funded or partially Government-funded legal services, and I think it was with that in mind that our board did, on March 27, recommend to you and to your colleagues in the House an increased budget request in the amount of $343 million.

I will turn at this point to Mr. Erlenborn and ask him to elaborate just a little bit on the particulars of our increased budget recommendation, Mr. Chairman.

Senator **HOLLINGS**. Good. Congressman, would you want to withhold?

Mr. Wear, you have got an opening statement that you wanted to deliver?

Mr. **WEAR**. If we may, Mr. Chairman. I will wait for Mr. Erlenborn to finish.

Senator **HOLLINGS**. All right. Go right ahead. Excuse me.

OPENING STATEMENT OF MR. ERLENBORN

Mr. **ERLENBORN**. Thank you, Mr. Chairman. I don't have much to say about the budget. Building on what Chairman Wittgraf has explained, and as I think you are certainly aware, this is a new board. We adopted this budget recommendation on the third day that we met as a board. We have had a couple of days of hearings trying to get up to speed as to some of the issues facing the Legal Services Corporation, but I don't think anyone on the board, at the point that we adopted this budget, thought that we were certainly experts in this field, and we are not prepared to make any drastic recommendations for changes in the direction that the Congress had determined in prior years.

So the budget, very frankly, was built upon the congressional decisions in the last budget year, asking for an across-the-board, approximately 6-percent increase in the amount that was appropriated, which turns out to be slightly more than 8 percent over the amount made available under sequestration.

There are a couple of initiatives, as well. From what we had learned already, we knew that the Legal Services Corporation had not been well prepared to respond to such problems as Hurricane Hugo or the earthquake in California. So we are asking for special emergency funds of $500,000 so that these people who are in need in the local grantee programs can have a quick response from the Corporation and not have to go through the special appropriation process so that we would be prepared to respond to future disasters such as this.

In addition, we are asking for $500,000 for competition and board initiatives. In the last budget request, the request was $1.7 million. None was made available. So we are asking for a reduced amount over what had been requested in the past.

This would allow the board to prepare for competitive bidding, which has been suggested and may be tried in the future, and other initiatives such as timekeeping for local programs. We could try these out; we could do some research; and then the board would be better prepared to make decisions to implement what the Congress decides we should do in this area.

These are the only real new additional funds we are recommending. Otherwise, pretty generally, it is an across-the-board increase. I should mention, by the way, that our request for management administration in fiscal year 1990 was $10,250,000. This committee or the conference committee decided that that should be reduced in the appropriation to $8.7 million by taking into account carryover funds that could be allocated to management and administration. So you will note that we have asked in this budget request for $10,146,000 which would generally relate to the amount that had been appropriated, plus the amount that we have now allocated through carryover of funds.

So I think that this is a modest request for an increase. As the Chairman has said, it is a novel request, I think, in light of the last few years, that the board would come and ask for this sort of an increase. Frankly, I am sure that many of us would like to ask for more, but we wanted to keep the request within reasonable bounds so that you would take it seriously.

EMERGENCY FUNDING

Senator HOLLINGS. On the reprogramming which Senator Rudman and I approved on March 20, just a parochial matter, but the legal services in Florence, Charleston, Spartanburg, they were to receive $12,000 each in emergency funding. This was down in the center of the Hugo disaster.

Are they going to receive those checks, and when, or do you know?

Mr. ERLENBORN. This is the emergency—yes; they will. I should turn to the administration of the Corporation, but this has been approved by the board.

Mr. WEAR. Mr. Chairman, those grants are being processed now. We needed to wait until we had the approval to do so or, I should say, waited until the time period had passed with regard to the reprogramming, but when that time period had passed we began to process those, and I believe that those have gone.

Senator HOLLINGS. Good enough. Did you have a statement, Mr. Wear?

Mr. WEAR. Yes, sir.

Senator HOLLINGS. We will include it in its entirety. You can highlight it or give it as you wish.

OPENING STATEMENT OF MR. WEAR

Mr. WEAR. Thank you, Mr. Chairman, for including the statement in the record. There is one or two things in the statement that I would like to comment on, if I may.

Mr. Chairman, there is ample evidence, some of which was presented to the Corporation in the hearing referred to by Chairman Wittgraf, that the face of poverty has changed in this country. I think that not only those demographics, but some other things give us an opportunity to get away from the conflict and controversy that we have had in the past and move into areas that won't be controversial.

In 1988, for the first time in history, female-headed, single-parent households became the majority of those that are in poverty. There are currently about 2.8 million female-headed impoverished households in America that receive no child support.

On the other side of that question is the fact that the people who are morally and legally responsible to support these poor children, that is, their fathers, have managed to escape this responsibility.

More and more, Mr. Chairman, these mothers and their children are turning to legal services programs, not for a handout but for some help in collecting child support. The Corporation and the organizations to which the funds that are appropriated by this committee go can and should help these children and their parents to live up to their legal and financial responsibilities.

As just one example, Mr. Chairman, the inspector general of the Health and Human Services Department recently issued a report that found that there are over 65,000 Federal Employees with overdue child support payments. They amount, in dollar terms, to approximately $284 million. More than two-thirds of these employees were receiving welfare benefits, even though the fathers were employed and capable of providing support.

Congress has shown its concern in the area of child support by requiring States to set up child support enforcement agencies, commonly known as IV-D agencies. These agencies have the potential to help many mothers and children obtain child support through systematic wage withholding, assessing interstate and intrastate data banks and through tax and benefit intercepts.

The reality is, though, that the IV-D agencies are currently overwhelmed with their task. In most areas, the caseload for each worker in these agencies is more than 1,000. In 1988, the States collected only 23 percent of the child support that was due, according to the HHS Office of Child Enforcement.

I think the fact that more than 60 percent of the poor, single-parent families that have children under 18, do not have a child support award demonstrates the magnitude of the shortfall in this current system.

Mr. Chairman, at our hearing to which Mr. Wittgraf referred, Mr. Steven Goldsmith, who was recently named by the Association for Children for Enforcement of Support as the best IV-D attorney in the country, testified that there is an enormous need for legal services for working poor custodial parents.

He told us that there is no comprehensive legal services available for the poor mother, and if the dad has a clever enough lawyer, the dad can bring a violation of the visitation allegation as a shield to the support enforcement weapons, and the mother will have no representation at all.

One of his principal points was that legal services lawyers can and should provide legal representation working with this organization. Once a support order is obtained and the ancillary legal issues, such as visitation and custody are resolved, then the legal services attorneys can use the enforcement mechanisms of the State agency to ensure collection of support.

In fact, Mr. Goldsmith testified that these agencies would welcome assistance. He said that he would be delighted to have a legal services lawyer in his office and that he would provide free rent and space and telephones and the things that were necessary for that lawyer to work in that area.

There is a tremendous opportunity here for the legal services programs and for the Congress to do something good both for these children, and also escape the controversies that we have had in the past. To my knowledge, there is no argument or debate about whether or not child support is good for kids and that parents ought to provide that support.

I think that we can make just tremendous strides by moving in this direction and getting away from a number of the controversial things that we have had to deal with in the past. I think that this is the bridge that we can use to get out of the controversy and into nuts and bolts sorts of things that the program was set up to do.

PREPARED STATEMENT

Mr. Chairman, I would be glad to respond to any questions that you or Senator Rudman or any other members of the committee may have.

[The statement follows:]

STATEMENT OF TERRANCE J. WEAR

Mr. Chairman, Members of the Subcommittee: I am Terrance J. Wear, the President of the Legal Services Corporation. It is my pleasure to speak with you today about the appropriations you will make for the legal services program for fiscal year 1991.

Let me begin by saying that I appreciate how much more difficult your job in this matter has become, in light of the fact that the last authorization bill for the Corporation was passed in 1977, more than a decade ago.

Over the twelve years that have come and gone since the Congress passed that three year authorization for the legal services program, the Legal Services Corporation has become increasingly effective in carrying out its mission—giving America's poor people ever expanding access to our judicial system through legal representation.

The battle for the legal empowerment for our nation's poor is being fought today by more than 11,000 people, in more than 320 private non-profit organizations across America.

And, Mr. Chairman, the battle is different today than it has ever been. The face of poverty has changed rapidly over the past two decades, and the identities and needs of the poor people who are our clients have changed as well.

In 1988, for the first time in history, female-headed single parent households became the majority—more than 50 percent, Mr. Chairman—of American households in poverty.

And there are 2.8 million female-headed impoverished households in America today that receive no child support.

The other side of this story is that the people who are morally and legally responsible to share in the support of an entire generation of poor children—their fathers—have managed to escape that responsibility.

Please bear in mind, Mr. Chairman, we are not speaking here of a few derelicts or scofflaws. We are not talking about exceptions to the rule. We are, however, talking about millions of people, a new generation living in poverty because of the inability to hold these fathers to their legal responsibilities.

More and more, Mr. Chairman, these poor mothers are turning to the local legal services programs, not for a handout, not even for themselves, but for their children—to win the support to which their children are legally entitled. The Corporation and the organizations to which these appropriated funds go can and should help these children make their parents live up to their legal and financial responsibilities.

Congress has already shown its concern in the area of child support by requiring states to set up child support enforcement agencies, commonly known as IV-D agencies. These agencies have the potential to help many mothers and children obtain child support through automatic wage withholding, accessing interstate and intrastate databanks, and through tax and benefits intercepts.

The reality is, however, that the IV-D agencies are currently overwhelmed with their task; in most areas the caseload for each worker is more than a thousand. In 1988, states collected only 23 percent of the child support that was due, according to the HHS Office of Child Support Enforcement. Considering that more than 60 percent of the poor single-parent families with children under 18 do not even have a child support award demonstrates the magnitude of the shortfall of the current system.

The IV-D agencies, moreover, do not provide legal representation for the custodial parent. In the case of AFDC recipients, if an attorney is assigned to the case, he represents the interests of the state. Even for non-AFDC parents, according to the Office of Child Support Enforcement, the attorney does not represent the interest of the custodial parent.

Mr. Steven Goldsmith, who was recently named by the Association for Children for Enforcement of Support (ACES) as the best IV-D attorney of the year, recently testified before the Legal Services Corporation Board of Directors that there is an enormous need for legal services for the working poor custodial parent. He stated, "There is no comprehensive legal services available for the poor mom * * *. And, if the dad has a clever-enough lawyer, he will bring a visitation allegation as a shield to our support enforcement weapons, and she will have no representation at all."

Legal services attorneys can and should provide that legal representation. Once an order is obtained and the ancillary legal issues such as visitation and custody are resolved, then legal services attorneys can use the enforcement mechanisms of the state agency to ensure collection of support. In fact, Steven Goldsmith testified that IV-D agencies would welcome this assistance. He said "I would be delighted to have a legal services lawyer in my office. I will give them free rent, free space, free telephones."

Legal services attorneys can have a direct impact on the problems of poverty for many women and children if they commit resources and effort to child support. Two-thirds of all legal services clients are women; most of these are poor single parents with children under 18. Child support and other family law matters are the most basic legal need these women and children face. These children have both a legal and a moral right to support from their parents and the legal services programs should help the mothers enforce these rights for the benefit of their children.

If the issue of the lack of child support represents a blackened eye on the changing face of poverty, surely the other eye is swollen and diseased from the disproportionate presence of drugs and drug violence in poor communities.

Here too, the legal services programs have a role. Nuisance suits and zoning laws are only a couple of the weapons at our lawyers' disposal when poor clients come to them and say, "Help us get rid of the drug dealers next door."

Mr. Chairman, you should be able to look to the legal services program as one very effective front-line division in this war; that is certainly one of our most important goals.

To achieve these goals, the Corporation requests $343 million for fiscal year 1991 for the legal services program. Of this total, $313,393,000 is requested to fund the direct delivery of legal assistance to eligible clients. Of this figure, $292,097,000 is allocated for the 284 basic field programs that provide general legal assistance to poor clients. An additional $1,105,000 is requested for supplemental field programs. These programs are alternative methods of providing direct legal assistance; included for funding are judicare projects, reduced fee for service contracts, and other initiatives, such as pro bono referrals.

The Corporation requests $7,759,000 to fund 32 Native American programs and components to provide legal services specifically for Native Americans. $10,717,000 is requested to fund 42 migrant programs and components that provide legal services for migrant agricultural workers and their families. In addition, $500,000 is requested for a Special Emergency Fund, to meet program and service needs stemming from national disasters.

The Corporation also requests $1,215,000 for the law school clinic program. The law school clinic program, which began as a pilot program in 1987, has proven successful in providing additional legal assistance in local communities, while at the same time providing training for law students.

A total of $18,861,000 is requested for program support. Of this, $689,000 is requested for the five regional training centers, $7,986,000 is requested for the 16 national support centers, $8,666,000 is requested for the 67 state support recipients, $956,000 is requested to fund the legal services Clearinghouse, and $564,000 is requested to fund the six Computer Assisted Legal Research (CALR) centers, which provide custom legal research support for other LSC-funded programs.

Over the past several years, the Legal Services Corporation has spent approximately $10 million per year for the management and administration (M&A) of the legal services program. This has been accomplished through a reduced appropriation for M&A in past years, because carryover funds were available from previous years to supplement the amount appropriated. We anticipate that we will need approximately $11 million for management and administration in fiscal year 1991, and, since minimum carryover for fiscal year 1990 is projected to be $854,000, the corporation requests an appropriation of $10,746,000 for M&A for fiscal year 1991. Of this amount, $500,000 is requested for the implementation of competition and other board initiatives. Congress has instructed LSC to "develop and implement a system for the competitive award of all grants and contracts" and, while some of the preliminary work on this matter has been done, the corporation will need these funds to carry out this task. Also, $100,000 of the total appropriation for M&A is requested as a special contingency fund.

The Corporation has taken steps in the past year to ensure that funds appropriated for the Federal legal services program are used according to Congressional intent. The Corporation, for example, recently proposed new regulations and published several revisions to existing regulations.

The Corporation published a regulation prohibiting involvement by legal services programs in redistricting or reapportionment activities. In response to a Congressional request made in 1984, the Corporation surveyed legal services programs about the extent of their activities in reapportionment and redistricting matters following the 1980 Census, and found that at least 34 legal services programs devoted more than 28,000 hours and over $600,000 to Congressional, state, and local reapportionment and redistricting efforts.

The Federal legal services program is, by design, nonpartisan. The Legal Services Corporation Act states that "to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures." Redistricting is, however, inherently political.

In view of the upcoming 1990 Census, the Corporation last year proposed a regulation prohibiting the use of any funds for such activities. The Corporation gave notice to this Committee of its intent to use Corporation funds to implement this regulation in July 1989 and the Committee raised no objection. The regulation was published as a final rule in August 1989.

The Corporation also amended its regulation concerning fee-generating cases to include a provision mandating that a portion of the attorneys' fees received by legal services programs be redistributed to other programs to provide a more equitable distribution of funds. As our fiscal year 1990 appropriations act mandates, no further action to implement this regulation will be undertaken until the new board of directors has been confirmed by the Senate.

The Corporation also proposed and adopted amendments to its regulation concerning the use of private funds. During the past several years, the Corporation has been hindered in its attempts to monitor program compliance with statutory and regulatory restrictions. Legal services programs that engage in activities that are prohibited by the Legal Services Corporation Act or regulations frequently claim that they are using unrestricted private funds to support these activities, without providing sufficient documentation, such as time records, to enable the Corporation to conclude that the claim is true. This regulation will put the burden of demonstrating compliance on the legal services programs, rather than requiring the Corporation to prove that the programs are not in compliance. Further action on these amendments will also be postponed until the new board is confirmed.

Mr. Chairman, it has been my pleasure to appear before you today. I'm very pleased with our record and will be glad to answer any questions you may have.

CHILD SUPPORT ENFORCEMENT

Senator **HOLLINGS**. You are looking at the author of the Uniform Support of Dependents Act. We passed that back 40 years ago in 1950 in the States of South Carolina, Massachusetts, and New York. I guess you have got it up in New Hampshire. We have been doing that.

Senator **RUDMAN**. I just want to ask just a quick question.

Senator **HOLLINGS**. Let me yield to you. I am going to submit my questions for the record. You go right ahead.

Senator **RUDMAN**. We want to hear from the other panelists. I just want to ask a quick question and then go on and come back.

ALLOCATION OF RESOURCES FOR IV-D CASES

What percentage of resources of the field organizations is there presently established, if you could, would you allocate for the kind of activity of the IV-D child support cases you are talking about, what percentage of all of the resources that they have out there in the field to represent people in a whole variety of areas?

Mr. **WEAR**. First of all, Senator Rudman, I will just speak about the resources that go through the legal services program.

Senator **RUDMAN**. That is what I am talking about.

Mr. **WEAR**. There are a number of resources available for them.

Senator **RUDMAN**. I am just talking about yours, legal services field programs; what percentage do the New Hampshire, South Carolina Legal Services Corporation allocate to what you are talking about, which we all know is a serious problem amongst all of our problems. I mean, that is a simple question.

Mr. **WEAR**. There have been a number of proposals floating around. I don't know if the Corporation has taken a position on it.

One proposal is that $20 million should be earmarked for that purpose.

Senator RUDMAN. Out of the field programs?

Mr. WEAR. Out of the amounts of money available in the budget request for this year, there is approximately $311 million requested for field programs.

Senator RUDMAN. So that would be approximately 6 or 7 percent.

Mr. WEAR. Something like that, yes, sir, I think.

Senator RUDMAN. I just want to get an idea. This is a serious problem, but I just didn't know exactly what you were heading for. Why don't we hear from the other panelists?

Senator HOLLINGS. Yes; Ms. Garvey, from the American bar. That is where this program started. You are going first?

Mr. MCCALPIN. Joanne defers to me. I don't know why.

Ms. GARVEY. I always defer to Mr. McCalpin.

Senator HOLLINGS. Go right ahead.

OPENING STATEMENT OF MR. MC CALPIN

Mr. MCCALPIN. For the record, my name is F. William McCalpin, and I appear before you today in my position as the incumbent president of the National Legal Aid and Defender Association. We have about 1,300 groups, organizations, programs, entities who are our members and something over 1,000 individual lawyers who are not connected with those programs but who participate with us in support and discharge of their professional obligation as they see it.

We, NLADA, along with the American Bar Association, other bar associations and lawyers throughout the country, have long been in the forefront of this effort to provide an independent, high-quality legal services program for the indigents of this country who cannot provide themselves with that very necessary ingredient of their lives.

We are grateful to you, Mr. Chairman, and to Senator Rudman, for your efforts in this and your devotion to the cause of justice, your prompt response to attacks on the institution and your unwaivering support.

I am privileged to be here today to represent our legal services field programs, all the persons interested in this, to convey to you our undying gratitude to you and to this committee for the support that you have given this enterprise in trying times over the last few years.

In doing that, I convey not only the gratitude of the lawyers, but also of the clients, who seek only equal access to the halls of justice of this country, and we are profoundly grateful to you gentlemen and to this committee for your efforts in our behalf.

As you know, in an earlier day, it was my privilege to chair the board of the Legal Services Corporation, and from that perspective and from prior and subsequent experience, I would like to touch on just a couple of points with you here today.

I believe it was in my last year on the board that we achieved the goal of so-called minimum access, which was two compensated lawyers for every 10,000 poor persons in the United States. Unfortunately, the next year, we suffered a 25-percent reduction to $241 million, and we are slowly, painfully, building back to that level.

Last year, for the first time, we got back to $321 million, but that was presequestration. So we were almost there, but we just slipped back a bit. We are extremely gratified that the present board represented here today by Mr. Wittgraf and Mr. Erlenborn, has requested an increase to $343 million. I think, as you have indicated in your opening remarks, that that represents a new day in this enterprise, a realization by these gentlemen, even in the short time they have been there, of the need for an expanded legal services, an appreciation by them currently not shared by a majority of their immediate predecessors.

We think that when they have had an opportunity to study this need more carefully and more fully than they have had in the short time they have been there, that they will realize that the increase they seek is too small. The objective, I submit, should be a return to the concept of minimum access, recognizing it with 1991 dollars instead of 1981 dollars.

Everybody recognizes you can't do that realistically in one fell swoop. We believe that a step in that direction, adjusting for inflation, would be to go the $425 million, and that is the level that we request in terms of appropriation. It is approximately $100 million more than this committee and the Congress approved last year, and we support it.

I would like to stop my remarks at that point. I would prefer to leave it with this committee simply to come forth with a clean appropriation bill.

That was the experience that we had when the legal services program was under OEO; it was certainly the experience that we had in an earlier day of the Corporation. But for reasons too well known to this committee, recent appropriation measures have been burdened with nonappropriation provisions to reign in an administration of the Corporation going awry.

For my own purposes, I believe the better approach, the ideal approach in an ideal world, would be simply to have a clean appropriation bill wiping the slate clean of the excesses of unauthorized actions of prior boards and leaving it to the new administration represented here today and newly enacted authorizing legislation which we believe may come, to chart the course of this enterprise over the future.

But I recognize the political realities, the uncertainties of legislation, the fact that recent history is not likely to be ignored. So I would like to touch briefly upon three concepts which are floating around, one of which was referred to obliquely by Mr. Wear a few moments ago.

They are competitive bidding, the earmarking of funds and restrictions on private funds. What I would urge is that this committee refrain from legislating in the appropriation measure on those. Basically, what I am asking is: Don't attach any more barnacles to this ship than it already has acquired over the years.

Competitive bidding, the notion of competition is, of course, basic in our free market economy, and I realize that there are members of the Congress, perhaps even of this committee, who sincerely believe that if competition is good for defense contractors, it ought to be good for legal services, but I urge you to resist the siren song and to examine the facts.

I have laid it out at some length in my remarks. I won't burden you with them, but I would simply say that last year, the legislature in my own home State of Missouri was persuaded that going to contract attorneys for public defense of indigents accused of crimes was an inappropriate and inadequate way to do it, and they approved a reorganization of the entire public defender system in the State of Missouri to do away with that and to go to an office of public defender, which is essentially, on the defender side, the counterpart of what we have on the civil side.

We find that the contracts were bid on lowball figures and then they come back for increases, or if they attempt to stay with the numbers, they shortcut the representation. They don't provide adequate representation. All over the country, there is a move away from that kind of notion in the public defender area, and I think if we went to it in a mass way across the country, as was proposed last year by the staff of the Corporation, we would simply have poorer representation at higher costs than we have now.

I applaud Mr. Erlenborn's suggestion a few moments ago that if you were to give some credence to that idea at all, you do it with funds that would permit them to research, to experiment and to look into it and not to decimate in one fell swoop the system which has served this country so well for 25 years.

Second, the earmarking of funds, the idea Mr. Wear suggested a few moments ago about earmarking funds for child support. The fact of the matter is that Federal and State governments this year are providing $1.6 billion to enforce child support. That is five times the entire appropriation for the Legal Services Corporation.

What we would do is a minuscule drop in the bucket, and I was present on March 26 when there was testimony by the gentleman from Indianapolis about putting legal services programs in this child support business. What he was asking for was not child support; he wanted a broader array of ancillary legal services to child support, the divorce, the custody hearings, that sort of thing, rather than child support.

I say to you, there are programs around this country that are doing that, and they are spending a substantial amount of their resources for those purposes right now. Indeed, in some instances, where the local program decides that that is their priority, they are doing that, as well.

Finally, there is the use of private funds. It seems to me anomalous that in the days when Government funding was restricted and we were told to go out and develop sources of private funding, to privatize, to some extent, this legal services movement, we were told to go out and seek those funds from private donors but not give the private donors any voice in how they were to be spent; that they were to be spent entirely within the limits of the Corporation act, and if I wanted to give money to the local legal services program to provide legal services for elderly people who were slightly above the indigency, I would have to give the money to somebody else, because the legal services program couldn't do it.

It is counterproductive to tell us to go out and raise private money and then say, "But the private donors can't specify how it is going to be used." I submit to you that there are adequate means available now to account for those private funds.

Indeed, the regulations and the requirement of the Corporation require private accounting for those funds, and there isn't any reason why the programs cannot be kept through the use of funds appropriated by the Congress for purposes set by the Congress and private funds for purposes set by the private sector.

But let me just conclude by saying basically, the problem with these so-called initiatives which were presented under the rubric of reform, is that they violate what I submit to you is an underlying fundamental principle of the legal services program, and that is that decisions about methods of delivery and substantive areas of law to which to devote the scarce, limited, restricted resources ought to be made by the local people, the local board of directors.

Remember that this Congress has required that 60 percent of the members of the board, the directors, must be named by the bar association representing the lawyers in the area and that by regulation, 30 percent must be eligible clients. I submit to you that that requirement by the Congress, together with the requirement of section 1007(a)(2)(c) of the act, which requires local priorities set as a recognition by the Congress of the validity of the local decision-making process, and I submit that these proposals would subvert that process, subvert the forces of the organization and would attach the barnacles to which I have referred.

PREPARED STATEMENT

Let me close by saying again, I am personally very grateful to you and all the people that you represent are very grateful to you for the enormous assistance that you have given us these past 10 years. Thank God for you. Stay the course; stay with us a little longer and working with these gentlemen to my left, I am satisfied that we will come forward with a legal services program that is even better than it has been in the past and will be a credit to you and the citizens of this country and to the new board. Thank you.

[The statement follows:]

STATEMENT OF F. WM. MCCALPIN

My name is F. Wm. McCalpin. I appear before you today as the incumbent President of the National Legal Aid and Defender Association. Our organization, which was founded in 1911, presently includes as members and represents 741 civil legal aid programs in the United States, 379 defender programs who represent indigent persons accused of crime, 191 associate programs who devote less than full time to these endeavors and 1,047 individual members, the great majority of whom are lawyers or law firms. Through our staff here in Washington and our officers, board of directors and committees, we provide our members with information, training and support as they fulfill their professional obligation of providing legal services to indigents in both civil and criminal matters.

Together with the American Bar Association, represented here today by Joanne Garvey, state and local bar associations across the country, bar leaders and a great majority of lawyers, NLADA has been at the forefront in the battle to preserve a strong and independent federal program to provide legal representation in civil matters for low-income Americans. Beyond doubt, that battle would have been lost long ago were it not for the vigilance and determination of this Subcommittee. We are grateful to you, Mr. Chairman, and to Senator Rudman, for your devotion to the cause of justice, your prompt response to attacks on the institution and your unwavering support. I am honored to have the opportunity to appear before you today, to bring to you the profound gratitude of the legal services community of the United States and of those millions of our indigent, fellow citizens who seek only equal access to the halls of justice.

In one of my earlier incarnations I had the privilege to serve as Chairman of the Board of the Legal Services Corporation. From that perspective and from my subsequent experience, I would like to share with you my views on several topics that you may wish to consider as you proceed to make an appropriation to the Legal Services Corporation for the fiscal year 1991.

As you know, the goal of minimum access, i.e., two compensated lawyers for each 10,000 poor persons, was achieved in fiscal 1981 with an appropriation of $321 million. There followed in the next year a cut of 25 percent to $241 million. Slowly, painfully, with the support of this Committee, we have built back to this year's post-sequestration level of $316.5 million. But a full 10 years later with all the intervening ravages of inflation and grinding poverty, we have not returned to the level of $321 million even in inflated 1990 dollars.

We are gratified that the newly named Board of the Corporation has requested an increase to $343 million. This is clear evidence that they are approaching their task with an appreciation of the importance of and the need for expanded legal services, an appreciation apparently not shared by a majority of their immediate predecessors.

We believe that when they have the opportunity to study the need more deeply, they will realize that this increase is too small. The objective should be to return to the concept of minimum access achieved ten years ago. Everyone realizes that in light of current fiscal conditions that can't be accomplished immediately. Phasing into 1981 minimum access adjusted for inflation over a three year period would justify a 1991 appropriation of $425 million. We support that approach.

I would prefer to rest my remarks with that recommendation. A clean appropriations bill was the norm when the legal services program was under OEO and in the early days of the Corporation. For reasons too well known to this Committee recent appropriation measures have been burdened with non-appropriation provisions to rein in an administration gone awry. I believe that the better course would be to pass a clean appropriations bill this year wiping the slate clean of excesses and unauthorized actions of prior Boards and leaving it to the new administration of the Corporation and newly-enacted authorizing legislation to chart the course of the enterprise, but I recognize the political reality that recent history is not likely to be ignored. Let me urge you in any event not to attach any more barnacles to this ship.

Certain proposals being circulated will impede our progress toward the goal of equal justice and run counter to a fundamental principle which undergirds the whole legal services program. The principle of local control and local decision making was a sound one underlying the legal services program of OEO, and that same principle was incorporated into the Legal Services Corporation Act in 1974. The Act and the legislative history are replete with provisions and comments about local decisionmaking in the operation of the local programs. That also is the thrust of a policy resolution approved by the House of Delegates of the ABA in 1984.

Our strong belief is that the vehicle for and the nature of the legal services required in a particular community are best decided by the persons in that community responsible for the conduct of the legal services program. In saying that, I am cognizant and comforted that Congress has required that 60 percent of the local boards must be lawyers named by the bar associations representing attorneys in the local area and that by regulation one-third of the boards must be clients eligible to be served by the program. This, it seems to us, is a recognition of the reality that local problems are best identified and addressed by local people making local decisions. This concept of local decisionmaking is directly tied to the priority-setting provisions in Section 1007(a)(2)(C) of the Legal Services Corporation Act.

Yet, today, there are those who would, in the name of "reform," wrest control of the local programs from those local boards of directors, composed of attorneys and clients living and working in the community, and centralize that decisionmaking authority within the Legal Services Corporation bureaucracy in Washington. We believe that would be a serious mistake, Mr. Chairman, and I would like to explain briefly how violation of that principle is involved in the context of three specific proposals currently of concern to the legal services community: competitive bidding, earmarking of funds, and restrictions on private funds.

The notion of competition is basic in our free market economy, and I realize that there are more than a few members of both Houses of Congress, and perhaps even of this Subcommittee, who sincerely believe that if competition is good for defense contractors it should be good for legal services. I urge you, however, to resist the siren's song and examine these facts.

The competitive bidding scheme envisioned by the current staff of the Legal Services Corporation (a scheme, I might add, which they likely would have already implemented had Congress, spearheaded by this Subcommittee, not intervened) is nothing more than a meat axe approach to dismantle the current delivery system. Under this proposed system, no longer would the Corporation fund one provider for each geographic area but at least two and possibly more. Funding would be allocated solely on the basis of the 1990 Census without any consideration of past funding or present case loads. Providers would not need to be full-service providers; indeed, grants could be awarded to one shop to do only divorces, to another to do only child support, for example. And that decision would be made by an administrator in Washington, D.C., not by local people based on local need.

Providers would no longer have to be governed by a local board controlled by local and state bar associations. In fact providers would not have to be lawyers; they could be entrepreneurs or paralegals not affiliated with any program. Client involvement would no longer be required. Nor does LSC contemplate the development of any performance standards or other criteria upon which to judge providers; applicants would be judged strictly on a cost-per-case basis, with no regard for quality or effectiveness.

This proposal strikes at the very heart of the locally controlled legal services delivery system that by any objective standard has worked extraordinarily well for more than two decades. I believe that a precipitate, mass conversion to a system of competitive bidding will not work, that it will be disastrous. Similar approaches in the field of indigent criminal defense provide clear warnings. In state after state and community after community, contracts with private defenders have been terminated because of poor quality and high cost. That system has been permeated with low ball bids and short cut representation. Participants in a Corporation sponsored experiment in Orange County, California, said they would never again be involved in such a system. If utilized generally for civil legal services, the predictable result will be a system of civil legal representation for poor people that is vastly inferior and far more costly than the current system. I urge the Subcommittee to continue to insist that any move in the direction of competition first be considered by an LSC Board of Directors that has been nominated by President Bush and confirmed by the Senate and then only on a limited, experimental basis, if at all.

Another assault on the concept of local control is the notion of earmarking funds at the federal level for delivery of a particular kind of service, regardless of a demonstrated need for that service in a given locality. Given the sponsorship of these "reform" proposals, it is not irrational to believe that the purpose is not to provide sorely needed representation opposed by powerful, vested special interests.

The Legal Services Corporation does not now, nor has it ever, set national priorities. Instead, local program boards, based on a legislatively mandated process to determine the needs of clients within their service areas, decide how to allocate scarce resources, what types of cases to take. A proposal currently espoused by some Members of Congress and the so-called Legal Services Reform Coalition would require every legal services program throughout the nation to earmark funds for representation in child support cases and to assist in the enforcement of drug laws, even though such representation may be unnecessary, irrelevant or counterproductive in the service area of a particular program.

In many local areas, clients of our programs have access to complete legal assistance for child support through the IV-D state agency. In fact, earmarking funds is particularly inappropriate for child support since the federal and state governments together are spending $1.6 billion in fiscal 1990 for child support enforcement, about five times the entire appropriation of the Legal Services Corporation. Earmarking funds from the already inadequate budgets of legal services programs to supplement these state and federal efforts seems to us to be unwise, inappropriate and unnecessary.

Earmarking funds for representation in drug-related cases is also an ill-considered and ill-conceived diversion. Not all communities served by legal services programs have serious drug problems. How civil legal services programs would enforce criminal drug statutes is not clear, particularly since the Act forbids involvement in criminal cases. President Bush has recommended a massive program of enforcement, training and education in drug-related matters. Legal services personnel have no special expertise or capacity to assist in the enforcement of anti-drug efforts. Appropriate participation in these efforts should be left to determination by local boards based on local needs.

LSC has not conducted any studies to determine whether these two problems are significant ones for eligible clients. Local programs, on the other hand, regularly reexamine the needs of the client communities they serve to determine what their program priorities should be. This proposal flies in the face of the concept of local control which has been the underpinning of the legal services program since its inception. Priority setting should remain with the boards of directors of local programs whose members, attorneys practicing in the community, client representatives and other local citizens, are in the best position to determine the needs of their own communities.

Finally, Mr. Chairman, let me address briefly the attempt by the current LSC staff and their supporters in the Legal Services Reform Coalition to restrict the use of all private funds and most IOLTA funds received by local programs regardless of the purpose for which the funds were provided.

The current LSC Act and regulations provide ample protections to guarantee that Corporation funds are not used, directly or indirectly, to support prohibited activities and to assure that private funds are not used for activities that are repugnant to the purposes of the LSC Act. Congress already has repudiated the prior LSC Board's attempt to restrict private funds through regulation and has prohibited LSC from imposing additional restrictions on private funds for legislative and administrative representation.

Still they persist. The proposal currently espoused in the name of "reform" would prevent local programs, for example, from using privately contributed funds to serve many elderly and disabled clients who do not meet LSC financial eligibility guidelines but who are still poor and cannot afford legal assistance. Private funds could no longer be used to represent aliens beyond the strictures of current appropriation riders.

IOLTA (Interest on Lawyers Trust Accounts) funds have also been targeted by the LSC staff. IOLTA funds are public funds and may not be restricted by LSC but only by the public agency providing the funds. In short, Mr. Chairman, those public agencies, as well as private funders, should have the same opportunity as Congress to determine the purposes for which their funds will be used and to select the institutions that can best carry out those purposes. This proposal is unnecessary, probably unconstitutional, and, again, would severely undermine the priority setting role of local program governing boards and unquestionably chokes off the flow of needed additional, private funding to support legal services programs.

Before I leave you, Mr. Chairman, I have one last point to make. You and we have been bombarded in the recent past with numerous statements, publications and speeches charging that legal services programs have departed from the original purpose of providing one-on-one representation to poor people and have improperly engaged in controversial social issues which generate political pressures. This is a gross misrepresentation of the history of the program and the content of the Legal Services Corporation Act. Let me quote from the recommendation of the President of the United States setting forth the principles underlying the establishment of the Corporation: "Much of the litigation initiated by legal services has placed it in direct conflict with local and state governments. The program is concerned with social issues and is thus subject to unusually strong political pressures * * *. However, if we are to preserve the strength of the program we must make it immune to political pressures and make it a permanent part of our system of justice."

That was the statement of President Richard M. Nixon in 1974. Today, no less than then, the political pressures being brought to bear upon the legal services program are immense. Many of the same people and organizations who fought in 1974 against the enactment of the Legal Services Corporation Act, who fought in 1977 against its reauthorization and who have fought for the past decade to destroy the program now come before you and your colleagues in the other House wrapped in the cloak of "reform" and ask that you fundamentally change the nature and purpose of this program.

We ask only that, before you legislate further in this appropriation process, you examine these "reforms" carefully and look at the record of the legal services program over the last twenty-five years. We believe that your objective analysis will lead you to reject these thinly veiled attempts to dismantle the program, just as you so steadfastly rejected the excesses of the previous hostile board. That board, thankfully, has been replaced, but an equally hostile staff remains in place, at least for the moment. We urge you to remain watchful, vigilant and to refrain from further legislative control of the Corporation in the name of reform.

We are grateful to you, Mr. Chairman, and to the other members of the Subcommittee for your continued interest and vigilance. We urge you to stay the course as we move forward through yet another time of uncertainty for our program and for our clients. Thank you very much for listening to me today and for your steadfast devotion to the cause of equal access to justice for all.

OPENING STATEMENT OF MS. GARVEY

Senator HOLLINGS. If I get in trouble in Missouri, you are my lawyer. [Laughter.]

And I am not indigent; I will pay. [Laughter.]

Ms. Garvey?

Ms. GARVEY. Thank you, Mr. Chairman. For the record, I am Joanne Garvey. I am a tax attorney in private practice in San Francisco, and I appear today at the request of our president, Stan Chauvin, of the American Bar Association to present the views of the American Bar Association. I am chair of the ABA's Standing Committee on Legal Aid and Indigent Defense, the oversight committee on delivery of legal services on both the criminal and the civil side for the poor.

My background in this area, although I have been always in private practice in a rather esoteric portion of the practice, in tax practice, is a long history and a long involvement in the delivery of services to the poor. I am a past president of the Bar Association of San Francisco, which has had one of the outstanding pro bono programs in the United States, and I might mention that it is not in my remarks, but that was really assisted and funded back in something like 1976 by a $30,000 experimental grant from the Legal Services Corporation that enabled us to get started and to produce the kind of leverage that I think has been demonstrated over the past several years in the work of the private bar in partnership with federally funded legal services programs.

In the many roles that I played in both the American bar at the State and local levels, I have had the opportunity to deal with members of the organized bar, bar associations throughout the United States, for many, many years.

Although lawyers seldom agree on almost anything, one thing I think they do agree upon is the necessity for a strong, vigorous, well-supported national program for legal services for the poor. Only last year at our house of delegates, which is our policy body, and again represents States and local bar associations throughout the United States, there was unanimously passed a resolution that urged Congress, the President, and members of the Legal Services Corporation board to support substantially increased funding of the Corporation so that there would be adequate resources for a high-quality legal services program.

I want to join, first of all, in echoing Bill McCalpin's remarks of deep thanks to this committee, to you, Mr. Chairman, to you, Senator Rudman, for your efforts in preserving this program. I think it is a new day. We are delighted to have the opportunity to work with the new board and we hope that this, as Bill says, will be a dawning of a new day.

We were certainly encouraged by the decision of the new board to seek an increase in funding of $343 million for all components. However, we don't believe that these amounts or the amounts that were appropriated last year are really high enough to even begin to make a dent in addressing all the unmet needs of the poor.

Therefore, we are recommending funding in fiscal year 1991 in the amount of $401.1 million. This is essentially really only a recognition of the inflationary base, but it is a start. We would like to support that.

One of the things that we have been doing in the last several years, and I think that both State and local bar associations have been doing, is to try to get some idea of what are the unmet needs of the poor? Recent surveys in preparation for an access to justice conference and surveys in New York, Massachusetts, Maryland, Illinois, and Alabama all seem to indicate that probably, only between 50 and 20 percent of the legal needs of the poor are being met. This is as a result and with the cooperation of a great network of legal services of which the federally funded programs are the centerpiece.

Our studies show that amazingly enough, probably, the one area where the legal means of the poor are at least being met somewhat is in the family law area. So I was rather interested in the remarks of Mr. Wear, the President, that respondents with family problems, according to our surveys, most frequently had the opportunity for legal assistance.

PRO BONO REPRESENTATION

Senator HOLLINGS. Let me just interrupt there, because I practiced for 20 years, and I have been up here for a little over 20 years. Of course, in criminal court, they called and said, "You are on."

Ms. GARVEY. Right.

Senator HOLLINGS. Even with a domestic judge, if someone was caught, they would call around and the bar would switch folks around and have them take turns and everything else. We wouldn't let anybody just really not have any representation at all. Are they doing that at the local level. In San Francisco, what would you do? You say legal services is taking care of 20 percent. What is happening to the other 80 percent?

Ms. GARVEY. There has always been at least some. I think the 20 percent of legal services being taken care of is already putting into that mix the voluntary bar association programs and the other mixes.

One of the things that has happened in the last 10 years in response is that the pro bono programs have grown from roughly around 50 to over 520 to the 130,000 lawyers involved in pro bono know annually these days in the United States. It is better than 10 percent; it is under 20 percent. We are trying to push to get more.

But I think what happens is people literally fall through the cracks. One of the things with respect to the family law, and I can speak of from personal experience, back in the early eighties, when the program got cut substantially, I was president of the bar association at that time, and I was the one that had to face up to what we were going to do with the estimated, at that time, 30,000 open cases from the legal services programs that were closed down.

We got on the phone. We put everybody together. We brought in everybody and we put together a safety net where underneath, one thing that was easiest for us to do, amazingly enough, was some family law representation, because we could coordinate and systematize in the uncontested cases, at least, to regularize status and things like dissolution and so on.

One of our more successful programs over the years has been a family law clinic that is staffed weekly by volunteers on a rotating basis and, in fact, we use this as a way of assisting those who want to learn the family law practice.

We have senior, very experienced senior family law practitioners who come in and guarantee that they will sort of act as guidance for those who want to learn, and it has been very, very successful.

But the fact is, people still get turned away, and there are large areas where people are not served. But it is a start; it is a network, and I think it serves a little better than from the days I can remember when my very first experiences with the legal services back in the sixties when I was a young lawyer on the legal aid board and they did nothing. You couldn't get a divorce; you couldn't get anybody to do anything, and there wasn't the tradition now that I think is firmly established of a junior partnership of a bar as volunteers as junior partners to the central core, which is the federally funded program.

I would just like to make a few comments about some of the other points that Bill has made and perhaps to discuss the idea of having, hopefully, a clean bill. You will be forced to consider, in the course of the appropriations process, some of the proposals, and as I say, I, too, am gratified to hear that perhaps rather than rushing sort of hell-bent for judgment on some of these issues, there will be an opportunity to perhaps step back and take a look.

Let me add just a few words about competitive bidding, and then I will talk a little bit about migrant programs and perhaps the fraud provisions. Again, I have a personal experience and also a certain amount of history with the idea of competitive bidding in three areas: One is in the criminal defense side. California tried this on an experimental basis in the early seventies and dropped it again as a very strong public defender system. It also, again, has a certain amount of volunteer network to assist on the criminal side. Of course, the judge can still say, "You are it, go."

The problems that arose were lowballing, in which you had programs that came in and they lowballed the bid. It was a program up in the northern part of our State that nobody could understand how they were going to ever possibly get a private firm to decide that they were going to do all the criminal representation in the capital. It was very simple; they simply pleaded everybody guilty in the morning.

So after that general litigation and a certain amount of pressure, those programs were, for the most part, eliminated.

On the civil side, we have been following a certain amount of interest, some of the experiments that the Legal Services Corporation was running. There was one in my own State in Orange County. You are always getting purical stories and edictal evidence of all these sorts of things from both sides.

The story I found rather interesting in the program is most of the people in the Orange County program would not want to repeat the program. But there was one very dedicated member of that program who was a nun who had gone in and taken her law degree and was doing good, literally, by trying to practice law and help people.

So she was an enthusiastic volunteer and bid in and found out she had underbid. She did not do what happened in Columbus, OH, simply withdraw from the program and say, "You can have your cases back."

She actually went and got a second job and worked nights in order to actually pay somebody to come in to assist her with the program. That is true dedication, but I don't think that is very efficient use of resources.

The third thing, and this is referred to in my written submission, is a firm in Columbus, OH, had experience with this type of a competitive bid problem, and they had a lot of difficulties with it: One was lowballing; two, was what we call cherry picking. You come into a contract, and you are going to have to make a living out of these things. No matter how dedicated you are, you really don't want the stuff that isn't going to pay very much. So what you try to do is get the things you think you can do on a volume basis and at least make a small living at it. You don't want the rest of the stuff. So that still leaves something to dump back in the pool.

There is the problem of withdrawals, what happens if somebody withdraws, and that did happen in the Columbus program. What does happen as a practical matter is it then falls back into the State or local bar to pick up. We had these experiences in bankruptcies of some of these heavily advertised little services. Kinds of legal services for middle class programs went bankrupt, so the bar had to step in literally to pick the cases up again.

That is not a good use of resources. So I am very happy to see that perhaps you will be stepping back and getting a close look at this to avoid the costs that are going to cause disruptions and try to see if the programs can really run efficiently and on a cost-effective basis, but also with quality, because I think that is something that has got to continue to be underlined. We should have quality programs.

Let me speak a few moments just briefly about fraud. This seems to be really a solution in search of a problem, as best I can tell. From what I understand, I believe that it has been before the committee some instances, perhaps 20 incidences which, I think, totaled something under $500,000, about two-thirds of which has been recovered, most of which were uncovered by the programs themselves.

It seems to be a bit of overkill, and you always ask yourself, "What do you need it for?" Again, my own personal experience has something to do with this. As a tax lawyer, I am always concerned when I see too many penalties, because what I think it does, it isn't good for administration. It frightens people away.

You just don't need them, and sometimes it is used as a threat by the administration to create difficulty as opposed to the kind of thing it is supposed to be used for, which is a prophylactic device and a means of ensuring that these problems do not occur.

Finally, very brief words on the migrant program. Again, this seems to be, to some extent, trying to solve problems that perhaps don't exist. The difficulty with the migrant program, as best we can tell, is it has been too successful. Migrant workers were recognized early on in the act in the Butler Services Corp. as being a very special group of poor people. They had a special case of problems. They moved; they move frequently. It is difficult to find representation in many cases. There are language problems. And Congress, of course, has an active law to deal with this, and there are special provisions dealing with migrant workers, including a requirement under most frequently used acts, but there has to be a negotiation.

So I don't think there is a question that there has been negotiation. We have reviewed the cases that have been brought with recorded decisions, and as best we can tell, there are only three programs that have ever lost, which is some indication of perhaps that went before a tribunal.

There are problems, and courts have found that there are problems and decided in favor of those who brought those lawsuits. Exhaustion of remedies is a doctrine that has to be followed anyway. You can't get into court without exhausting your administrative remedies. So I am a little confused again as to what that is.

Finally, with respect to alternative dispute resolution, we have been trying to look into that to see if there are ways, mediation or arbitration, that could perhaps make the system work better and we would be very happy to work with the Corporation to look through this.

But at the moment, again, we are still trying to understand exactly what the problem is and whether it is truly something that could be worked out using alternative means or whether it is used simply as a delaying tactic.

So with those particular points and we again have difficulty seeing why they should be encrusted in the authorization process or in the appropriations process, where I don't think there are real problems, but we are prepared to continue to talk and certainly, to work with you and the Corporation's board to hopefully get these resolved.

Senator HOLLINGS. We thank you very, very much. This has been outstanding. I am going to reserve my questions here because we are a little beyond the schedule, but I will submit them for the record. Let me yield.

Senator RUDMAN. I don't have that many. Thank you. I am curious whether the statements from Ms. Garvey and Mr. McCalpin have also been delivered to Legal Services Corporation? Do they have copies of your statements?

Mr. MCCALPIN. They are here on the table.

PREPARED STATEMENT

Senator RUDMAN. I wish you would. Those are excellent statements, very thoughtful, a lot of good information, a lot of history, and I would hope that the Corporation would have a copy of those statements.

[The statement follows:]

STATEMENT OF JOANNE GARVEY

Mr. Chairman and Members of the Subcommittee: I am Joanne Garvey, a tax attorney in private practice in San Francisco. I appear today at the request of our president, L. Stanley Chauvin, Jr. to present the views of the American Bar Association. I am the chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. I have also served as the president of The Bar Association of San Francisco, which has an outstanding and extensive pro bono program. These roles have brought me in contact over the years with hundreds of bar association leaders concerned about the delivery of legal services to the poor. And while these bar officials, being lawyers, disagree and argue about many issues, I have been struck by how united they are in their support for the continuation of the Legal Services Corporation as a vigorous and effective national program of legal services for the poor.

Bar leaders from throughout the country are also unequivocal in joining the ABA in calling for an increased appropriation for the Corporation. Last year, the Association's House of Delegates, our policymaking body a majority of whose members are representatives from state and local bar associations, unanimously adopted a resolution urging: * * * the President, the Executive Branch, the Legal Services Corporation Board of Directors and Congress, to support substantially increased funding of the Corporation so that there are adequate resources for a high quality legal services program.

We are pleased that Congress saw fit to make a small increase in the Corporation's appropriation for this year, i.e., $316.5 million after sequestration. We are encouraged by the decision of the new LSC Board of Directors to seek somewhat increased funding of $343 million for all components of the national program. Neither of these amounts, however, are high enough to make much of a dent in addressing the unmet need of the poor for legal services. We, therefore, recommend funding for fiscal year 1991 in the amount of $401.1 million.

Congressional funding for the Legal Services Corporation reached its zenith in fiscal year 1981 with an appropriation of $321 million. That figure was sufficient to approach the goal of "minimum access" federal funding for legal services, i.e., two attorneys for each 10,000 poor persons. However, inflation over the past decade has so eroded purchasing power that it would take $477 million in 1990 dollars simply to equal the fiscal year 1981 appropriation in that respect.

It is useful to keep in mind that the term minimum access still equates to addressing only a small percentage of the many legal problems faced by the poor. Our hope is that one day we can discuss ways to reach "equal" access to justice for those who live in poverty. In the meantime, we recognize that budgetary constraints require a gradual approach to what we hope will be a reestablished Congressional goal.

There has been much discussion in recent years about the need for lawyers to provide more pro bono services and for additional funding to be raised to supplement the federal contribution. We believe that the organized bar has played its part admirably in increasing both the level of pro bono services and of supplemental funding. The American Bar Association spends almost $1 million each year to promote and support pro bono efforts by private lawyers, and our state and local bar association counterparts are likewise providing substantial resources. The result has been that the number of bar association sponsored pro bono programs has grown from 50 to 520 and they involve over 130,000 lawyers. Similarly, the spread of IOLTA, or Interest on Lawyer Trust Account, programs this past decade has been a response to the crisis resulting from the decline in federal funds. IOLTA programs, now adopted in every state, distributed $60 million for civil legal services for the poor in calendar year 1989.

While significant, the additional resources generated by the bar have been insufficient to increase service levels in the face of reduced federal support and increased demand. Rather, recent studies in Maryland, Massachusetts, New York, Alabama and Illinois repeatedly indicated that only between 15 percent and 20 percent of the legal needs of the poor in those states were being met.

This data was confirmed by a pilot national civil legal needs survey of low income people conducted for the ABA last year by an independent research firm. The survey revealed that there were approximately 4.9 million civil legal problems in 1987 for which low income households had legal assistance and a staggering 19 million problems for which there was no legal help. This translates to only 20 percent of the legal needs being met.

Survey respondents were questioned about problems in ten broad categories: consumer, utility, housing, employment, school, medical, public benefits, family, discrimination and other. It was found that legal representation varied considerably depending on the category of the problem. Notably, in light of some recent criticism directed at legal services programs, respondents with family problems most frequently had legal assistance. On the other hand, respondents with medical access problems most frequently received no legal help. Significant problem areas—public benefits, utility, discrimination, and consumer problems—were the next most frequently reported categories where legal assistance was not received.

A $401.1 million appropriation would merely restore the program's buying power to its 1985 level of $305.5 million. However, it would be a significant start on the road back to minimum access.

During the appropriation process, you will likely be called on to consider a number of provisions proposed last year by the Corporation or introduced on the House floor by Congressmen McCollum and Stenholm last year as amendments to the LSC appropriation. These provisions would cause fundamental changes in the federal legal service program. We strongly urge that they not be acted on until there has been ample opportunity for reasoned discussion and information has been presented bearing on the need for their adoption and detailing the impact they would have.

Supporters of the amendments have indicated that these changes are motivated by rampant abuses by legal services grantees. We believe that the amendments' proponents bear a heavy burden to establish that there is a serious pattern of abuse that would be remedied by each of these changes. This burden has not yet been met.

Before turning to some comments on specific amendments, I would like to emphasize the Association's view that local control should remain one of the guiding principles of the legal services program. The majority of the members of local program boards are respected attorneys appointed as representatives of mainstream state and local bar associations. Together with the client and community leaders who also serve on the boards, these individuals provide responsible and committed leadership. They are best situated to assess the legal needs in their community, develop resources to provide services and determine what types of representation will be provided. They should not be micro-managed. (In 1986, the ABA adopted revised Standards for Providers of Civil Legal Services to the Poor (hereinafter ABA Standards). Standard 7.1-1 calls on each provider to "have a governing body which establishes broad general principles consistent with client needs, which assures compliance with applicable law governing the operation of non-profit corporations, and which regularly reviews provider operations.")

The most disruptive, and the most troubling, of the amendments proposed concerns the proposal to supplant the current system of legal services grants with a program of competitive bidding. We are aware that this committee has adopted an appropriations rider that authorizes a new Board of the Corporation, once confirmed, to "develop and implement a system for the competitive award of all grants and contracts." However, we do not understand this rider to require that the current system be immediately dismantled and replaced by an untried and unproven substitute, as is intended by the McCollum-Stenholm and LSC proposals. Instead, this committee's provision would allow for experimentation and evaluation of different approaches for competitive bidding. If competitive bidding does not prove workable within the legal services context, the current delivery system would still be intact and clients would not be harmed.

We are unaware of any basis for concluding that competitive bidding would improve on the current approach to funding and providing civil legal services to the poor. Competitive bidding in the criminal defense field has proven, in almost all circumstances, to be problem-ridden and a failure. The limited experiments with competitive bidding by the Corporation in 1986 and 1987 demonstrated, from what we have been able to learn, that this approach does not work any better for civil legal services.

The Corporation has never issued a report on its experimental contracts for the handling of specific case types in some 10 to 20 locales. We have, however, through our work with bar associations and pro bono and legal services programs learned about the occurrence of many problems with both the design and implementation of the experiment. For example, the immediate past president of the Columbus Bar Association, Denis Murphy, recently wrote to the new LSC Board:

> Our experience with respect to competitive bidding in Columbus, Ohio was unsatisfactory. The Columbus Bar Association and the Legal Aid Society of Columbus approved and worked with the Legal Services Corporation's Private Law Firm Demonstration Project in 1986–87 * * *. We found with respect to the demonstration project utilizing competitive bidding: (1) the successful bidders either low-balled to earn the contract or underestimated their costs; those who correctly estimated their costs in formulating their bid came in with high bids and were not selected; (2) successful contractors wanted only the simplest and "cleanest" cases to avoid loosing money, thus the types of legal problems and issues to be handled by the contractors had to be narrowly defined to fit their case selection criteria; (3) these contracts bid on a competitive bid basis

> did not accommodate the special needs of eligible clients with mental health problems or other special problems; (4) the competitive bid method did not adjust easily to significant changes in the domestic relations laws and procedures which took place during the contract period; (one of our contractors actually withdrew from the project in midstream because her continuation "would be economically unfeasible") * * *. I believe our experience demonstrates that competitive bidding raises false hopes and creates serious gaps in the delivery of civil legal services to the poor.

This occurred in a situation where there was a legal services program to screen cases and to step in and represent clients when trouble developed. Imagine what might have happened if, as has been proposed, contractors for specific case types had replaced the general legal services provider.

Last year, the Corporation issued a proposed regulation on competitive bidding. It also held two public hearings on this subject. The oral and written comments presented revealed that there is no groundswell of support for competitive bidding from clients, bar associations or private attorneys. Instead, comment after comment focused on the harm competitive bidding as proposed would do to the delivery of quality legal services to the poor. Commentators pointed out that the very successful pro bono-staff program partnerships which have been established throughout the country would be destroyed and that the level of pro bono services would decline.

We are skeptical that, except in special circumstances, competitive bidding as proposed will improve the delivery of legal services to the poor. We ask that you prohibit its general implementation until there has been responsible and carefully controlled experimentation by the Corporation under the direction of a confirmed Board of Directors.

As I previously mentioned, local control must continue to be a hallmark of the legal services program. Proposals to earmark federal funds for specific types of cases, no matter how well intentioned, are simply not good ideas and should be rejected.

On reflection, it becomes apparent that the needs of the poor vary greatly from community to community. Legal needs studies have revealed that the most pressing problems in urban areas may be far different than those in rural communities. For example, the recent Illinois Legal Needs Study, prepared for the Illinois State and the Chicago Bar Associations, found that in Chicago the most pressing categories of unmet need were in the housing, public benefits, utility and consumer areas, while in rural Illinois family law problems were the greatest unmet need, followed by public benefits, employment and health problems.

Many local factors also affect which services are provided by legal services programs. These include the availability and willingness of pro bono and other legal aid organizations to accept particular types of cases and the ability of other funding sources to provide support for certain types of activities. Local program boards are in the best position to gather information about client needs and non-LSC programs and resources and to conduct planning and priority setting based on those facts. Indeed, this approach has been incorporated in the Legal Services Corporation Act and is recommended in the ABA Standards.

Proposals have been made to specifically earmark the use of LSC funds for the fight against drugs. This country is already allocating billions of dollars to battle the drug epidemic. A few million dollars more spread across the country is likely to have little impact; the removal of that sum, however, from the relatively small amount of money provided for legal services can result in the elimination of attorney positions and even the closing of offices, seriously affecting serving the critical needs of low-income persons. It is also unclear what constructive uses could be made for this money.

Suggestions have also been made that legal services funds be earmarked to provide representation for the collection of child support payments. Again, federal and state governments already spend an enormous amount of money, over $1 billion annually, to provide representation for child support enforcement. Moreover, eligible clients who are AFDC or Medicaid recipients do not need legal services representation because they are required to participate in the state programs these moneys fund.

Child support actions generally only assist single parent poverty households. Yet over one-half of the poor children in this country live in two parent families; a significant number of poor people live alone or in unrelated subfamilies. Many of them have critical needs for shelter or public benefits. Thus, the earmarking of limited funds for child support enforcement on behalf of one category of the poor would be at the expense of assisting them and others in other critical ways. This simply does not make sense in the absence of compelling justification.

Similarly, the proposed amendments directed to the representation of migrant farmworkers are not warranted by the information we have seen. These would create procedural hurdles in controversies between migrant workers and farmers that are not imposed on any other group of poor persons seeking to vindicate their statutory and constitutional rights. These amendments would create a separate—but unequal—system of justice for a category of poor people who have very special legal difficulties related to their status. Their transient nature, their dependence on crew leaders, the linkage of their jobs and their housing, their inaccessibility to the legal system and their communications and language difficulties have been well documented. Congress has recognized these difficulties in legislation such as the Migrant and Seasonal Agricultural Worker Protection Act.

The abuse of migrant farmworkers continues to be a significant problem. In this country, the large amount of damages paid by growers for statutory violations is but one indication that the lawsuits filed by legal services programs are not frivolous but are brought to enforce substantive statutory rights of farmworker clients. Complaints about the actions of migrant lawyers have not been established to be well founded.

The so-called anti-solicitation proposal is particularly invidious. It is simply unrealistic to expect that migrant farmworkers who move frequently, who do not have accessibility to phones and transportation, and who are housed in isolated rural areas will, on their own, locate a legal services program to provide information and assistance to them. This proposal establishes a barrier to information and assistance that may well be insurmountable.

No one will disagree that fraud and abuse in any government program must not be tolerated. Yet the proposals to add additional penalties for any fraud and abuse in the legal services program appear to be a remedy in search of a problem. LSC has been spending $5 million a year to monitor 323 grantees, more than $15,000 a program. We would expect that such well-funded monitoring would be able to reveal most any misuse of LSC funds.

Yet all that has been discovered, according to a May 3, 1989, letter from LSC President Terrance Wear to Congressman Barney Frank, are 20 incidents which LSC believes may have involved criminal conduct on the part of LSC grantees, during the period 1980–1989 when over $2 billion in grants were disbursed. Not all these cases, however, involved allegations of fraud or embezzlement. Furthermore, it was apparently the programs themselves, not LSC, that in most instances uncovered the financial misappropriations or embezzlement, sought prosecution and restitution, and notified LSC of the situation.

It appears that based on the evidence put forward by LSC, sufficient authority already exists to protect LSC grant funds from theft and fraudulent use. There seems to be no reason, therefore, to enact provisions, such as private rights of action, that could be used for harassment purposes by disgruntled adverse parties and others opposed to program activities.

We also are opposed to the proposals to prevent legal services programs from utilizing funds, regardless of the source, in cases involving redistricting at any level of government. While couched as a means of stopping partisan political activity by programs, this proposal in fact impedes enforcement of important rights of a non-partisan nature under the Voting Rights Act. These cases are not brought to benefit a particular political party. Rather, they are frequently based on the effective denial of the right to vote because of discrimination based on race—cases involving, for example, county commissions with at-large districts resulting in no minority members despite their sizable population in the community or a state legislature with districts gerrymandered to dilute the voting power of minorities. The Corporation's 1985 report to Congress revealed that the great number of these activities, many of which do not involve litigation, are focused on the local level.

Few programs actually engage in redistricting activities. When possible redistricting cases arise, local boards of directors are best situated to determine whether they should be brought in the face of competing demands for critical services. This proposal is yet another attempt to interfere with local control of programs. As with the proposals to compel that funds be used for particular purposes, little evidence has been presented to support enacting this provision.

Just as the principle of local control requires giving program boards the flexibility to utilize LSC funds to address the particular needs of their communities, it follows that their hands should not be tied in how they spend non-LSC funds. The ability of local boards to raise additional funds to serve the poor and disadvantaged should be encouraged, not hampered by restrictions on fund usage. Attempts to dictate how IOLTA funds may be used are particularly distressing. These programs developed in order to supplement LSC-funded services, not merely to duplicate them. Grant decisions are made by local governing bodies, aware of the critical unmet needs in their states. The proposals by LSC and others to place restrictions on the use of non-LSC funds do not merit support.

We are puzzled by a proposal to require local program boards to decide what specific cases can be brought by program attorneys. Local boards already are required to establish priorities for the use of program resources and to determine the types of cases and matters that the program will handle. Any requirements that place attorney board members in the position of deciding whether particular cases should be accepted conflicts with their ethical responsibilities as set forth in ABA Formal Opinion 334 and ABA Standards 7.1-1 and 7.1-2. The suggestion by LSC that this amendment is needed because program boards are not fulfilling their current responsibilities is once again unsupported.

Finally, proposals have been made to impose burdensome timekeeping requirements on program activities. This would establish a national timekeeping system which apparently could not be adjusted to respond to the needs and characteristics of individual programs. Many methods already exist for LSC to assure program accountability. We have not heard of any worthwhile benefits that would be derived by establishing a national timekeeping program. We have, however, heard many times about the detrimental impact of LSC reporting requirements on the ability of programs to serve clients. Most recently, at the meeting of the LSC Board of Directors on March 26, the president of the board of a small Missouri legal services program discussed how the reporting requirements currently in effect and those under consideration divert resources from client service. Instead of imposing new and additional layers of recordkeeping requirements, the Corporation should examine all its types of record requests and develop a less burdensome method of gathering only necessary information.

In closing, we would like to thank this Committee for its ongoing support for an effective legal services program and urge that it appropriate $401.1 million for fiscal year 1991 as a start to a return to minimum access.

STATUS OF LSC BOARD NOMINATIONS

Senator RUDMAN. Just briefly, I think just a few questions and I am really not going to try to pin anybody down, because you are new. Let me ask the chairman, Mr. Wittgraf, have you any information from the White House of recent vintage as to how far along they are with the FBI reports and the other bookkeeping to these nominations up here?

Mr. WITTGRAF. As I thought I suggested, or as I intended to suggest earlier in my brief, my understanding, from visiting with Deputy White House Counsel John Schmitz, is that the nominations should be made by early June if all goes well. They are still completing the FBI field checks.

Senator RUDMAN. January. When were you nominated?

Mr. WITTGRAF. Recess appointees, late January, January 25 or 26.

Senator RUDMAN. From January to June; it is just incredible. I am going to check into this myself. The reason I am concerned about it is because, obviously, there is a lot of discussion about this board, and as you know, there is a lot of back and forth. Now that we have agreement on a board, and a lot of it is dependent on the board being confirmed, if it doesn't get up here before June with hearings before the appropriate committees and so forth and the obvious recess, I am concerned whether we will have a confirmed board.

I am anxious to see a confirmed board, as you know. So I will talk to the people at the White House myself and see if that can be moved up at all. I just can't believe that anybody who was appointed is giving the FBI that kind of trouble, at least I hope not.

Senator HOLLINGS. Commit a crime; they will get there quicker. [Laughter.]

Senator HOLLINGS. Six months? Come on.

TIMEKEEPING

Senator RUDMAN. I am not going to try to pin you down on any of your views. I will ask this really of the Chairman or the Vice Chairman, these questions. This whole timekeeping question, the committee went into it in great detail. We checked with the Justice Department, State attorney generals, which I, of course, was one at one time, public defenders.

We found an absolute rare instance where—I don't think we could find any—where any nonbillable time was kept unless it was for a very special and specified one-time occasion.

For instance, the attorney general of a State wanted to know how much time went into a particular antitrust case because of possibly getting legal fees back and so forth. This was quite a discussion back in the last several years. Is this something you now have under study? Are you going to try it someplace? Where are you on it?

Mr. WITTGRAF. As I stated earlier, Senator, our board has met three times: February 12, March 26, and March 27. The first meeting was essentially devoted to doing a few emergency things, such as the emergency request we had from the States of South Carolina and California; March 26 was taken up entirely from early morning into the evening with testimony from some 40 witnesses; and then our third day of meeting, March 27, was devoted essentially to two things: One was our consideration of a budget request, and the other was the transition in the Legal Services Corporation presidency.

We will be meeting again April 30, our third meeting, our fourth day of meetings, and at that point, our agenda will include, hopefully, a couple of legislative experts, Mr. Polgar and his counterpart, Mr. McNulty, to review McCollum-Stenholm for our board members, who really don't have the full benefit, at this point, of the history and knowledge of the Legal Services Corporation history from 1974 to date.

Going beyond that, we will begin to look specifically at the so-called reforms that are part of the McCollum-Stenholm package, other so-called reforms that have been suggested to us, and review them in terms of present status, present regulations, the pros and cons and what, if anything, needs to be done. I think, speaking for myself at the moment, I do not have enough knowledge to have a firm view on the question of timekeeping, to use your example. That problem applies, more or less, to the other so-called reform measures.

Perhaps Congressman Erlenborn does, but at this point, and I think I speak for most of the members of the board, we are just at the beginning of our learning curves and are not in a position where we have firm opinions.

FEW BAD APPLES

One comment: I think what is clear to us is that the vast majority of the legal services staff grantees and the vast majority of the legal services staff attorneys and support staff are doing what we would expect them to do: Providing fundamental legal services on the civil side for indigent Americans. There are a few, perhaps, bad boy grantees, if that is an appropriate characterization, who have gotten into some controversial areas which have become the hooks for much of the debate over the last 10 or so years.

Senator RUDMAN. I think you are absolutely right. I think 2 percent of the people up there have caused 110 percent of the problem. There is no question.

Mr. WITTGRAF. We anticipate that there needs to be kind of healthy, albeit sometimes wary, give-and-take between the board and its staff in Washington and the grantees across the country.

REFORM MEASURES

We don't expect to be patsies for them, nor they for us. Having said that, we want to be as supportive as we can, and I think we will look at so-called reform measures with a skepticism or a wariness in terms of what the result is to be and what kind of burden goes with trying to affect that result.

We come supporting; I think all 11 of us are very supportive of the provision of legal services, and at least in broad terms certainly share the views of Mr. McCalpin and Ms. Garvey on behalf of their organizations.

But at this point, I don't think any of us are prepared to take specific positions, or for the board as a whole, to take a specific position on the so-called McCollum-Stenholm provisions or on any other provisions.

CAUTIOUS APPROACH TO REFORM

Senator RUDMAN. Let me just say, then, on that, on the question of competitive bidding, on the question of private funds, on the other component which I believe was agricultural litigation, I would just make an observation that is as probably sound in almost any situation, that is, and I think people from the ABA and Mr. McCalpin refer to it: If you are going to do anything, I hope you do it in an evolutionary way and not a revolutionary way.

This is a program which, in the main, with all of the publicity, has worked very well for poor people; hasn't worked as broadly as it should, but it has worked well. If you look at the basic statistics, it has worked well. We do have some folks out there doing some things they probably ought not to be, and they have a lot of problems, unfortunately.

Unfortunately, many here in the Congress who have been antilegal services kind of think that is typical. They haven't taken the time to look, so I would just hope that whatever you do, if you decide, for instance that maybe competitive bidding is a good idea, try it someplace.

If you think timekeeping is better, then try it someplace with a cooperative group who is willing to help you in your experiment to see if it will work in good faith.

We would implore you that up here on the Hill, I can tell you this: That if there are major changes without good, structured studies; people would be very upset.

Maybe Mr. McCalpin is wrong. Maybe Ms. Garvey is wrong. Maybe competitive bidding will work. Maybe it will work in a different way than it has ever done before. I will not dispute that it might, let us find out before we throw the baby out with the bath water.

I am expressing to you the view of, I think, a majority of people here in the Congress as to how you ought to proceed. How you proceed is your own business. We don't want to tell you how to proceed, but you certainly ought to do it with caution.

AGRICULTURAL WORKERS PROTECTION ACT

I would just like to make an observation. I was looking at this reform package, and it was very interesting what the proposal is. I think what the is that agricultural workers who have money will be able to get protection under the Agricultural Workers Protection Act, and if you are poor, you can't. What a crazy proposal.

When you look at it on its face, it makes no sense. If that is a lousy piece of legislation, I think we ought to repeal it, modify it. I am talking about the act. What we certainly ought not do is say, "We have got this law here." Congress will not repeal it, so here is what we are going to do: We are going to take poor people and say, "We are not going to protect you. You can't get your rights protected. Get a few dollars over here and then you can use them."

That is a silly proposal. I don't use the word "silly" about proposals, but that is kind of silly. I hope you will look at all this in the light of—I don't think you can solve it all.

We could have solved some of it. We have some laws up here, but that should not the books; we ought to do something about it. We should not strip legal services. It is like the court stripping over here in the Senate 4 years ago. We tried to strip the court of its power look to at the busing case, look at this case. It is the wrong way to go. I am just really telling you how I feel.

Mr. Wittgraf. I am not sure, Senator, that Mr. Erlenborn or I, or any of the members of the entire board, would be adverse to what Mr. McCalpin and Ms. Garvey suggested in terms of leaving the barnacles off Mr. McCalpin's ship; putting very few, if any, handcuffs in the authorization or in the appropriation language before we get to authorization or reauthorization.

That is a determination that you and your colleagues end up making based in large part upon your faith in us and our colleagues. I don't think we would be uncomfortable with that, and I think it is fair to say from the 3 days our board has met that whatever we do will be something that we feel is appropriate without any particular preconceived philosophical notion that we are trying to undercut legal services grantees, that we are certainly by no means trying to do away, long term, with the legal services program funded by the Federal Government.

COMMITMENT TO LEGAL SERVICES

Rather, I think, our basic concern is providing as many legal services as possible for people who need them, who can't obtain them otherwise and we are taking them into account, and I do certainly agree with Mr. McCalpin, too, that the face of poverty and the kinds of legal services needs that exist today probably are far different than those that existed in 1963 and 1964 when we were concerned much more with entitlements and when what I will call family law or domestic law, going beyond just child support recovery itself, is a tremendous burden upon the legal system. I suspect it is going to become even more so.

So that if you have faith in us, we are not adverse to taking the barnacles off, either. That may be the one good thing in the time that has passed in our being nominated and being only recess appointees: You have an opportunity to eyeball us and see just how bad or just how sincere or insincere we are, and hopefully, maybe that will simplify the appropriations process down the road.

Senator RUDMAN. I hope so. I will conclude simply by saying that we do come in good faith, and you are viewed by key players on the Hill as people who come here in good faith. We know some of you very well. Your Vice Chairman, who I personally asked to do this, although I didn't know him very well; I had heard of his reputation——

Mr. WITTGRAF. He said you owe him. I am not sure how much. [Laughter.]

Mr. ERLENBORN. I am glad you said that.

Senator RUDMAN [continuing]. And there are others on that board who I know and people who come here without an agenda. All we cared about was that this board come on board would an agenda, and I am convinced the board doesn't have an agenda. Now you have to work through, and the reason I wanted you to make your statements is I read those statements, and they are both remarkable statements for their clarity and for their historical accuracy.

I think they are worth looking at. Obviously, there are people in this body who would like to quote your form and do this and that. All I am saying is that I think you ought to make sure we start reforming because you are not looking at ancient history. As I look at the Corporation, as it operates, the Corporation in the main does a good job. So we will look forward to working with you on an ongoing basis.

I, for one, would like to see a pretty clean appropriation bill. I am tired of the micromanagement here. I think we have to have faith. That is why I make a suggestion, if you do things in an evolutionary way, it is going to be a lot better for all of us.

I appreciate you being here this morning. I appreciate representatives from National Legal Aid and Defender Association, from ABA and, Mr. Wear, glad to have you here this morning.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Rudman**. Thank you. We will be submitting some additional questions which we would like for you to answer for the record.

[The following questions were not asked at the hearing, but were submitted to the Corporation for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

FY 1991 BUDGET REQUEST

The FY 1991 Budget request for the Legal Services Corporation is significantly different in more than one aspect and represents what I hope will be a period of rejuvenation for this important program.

First, the new board's budget recommends $343 million for the Legal Services Corporation (LSC) during FY 1991. This level of funding represents a $26,475,000 or 8.3 percent increase over the amount provided in FY 1990.

Second, the new board's budget includes funding for regional training centers, state and national support centers, and other support services vital to the delivery of legal assistance to the poor. While Congress has continued to earmark funds for these particular programs, it has been years since an LSC budget requested monies for them.

Q: Could you please explain to the Committee your rationale in including funding for these services?

A: The current Board of Directors, appointed by President Bush in January, 1990, is committed to rebuilding a consensus about the goals and purposes of the Federal legal services program and securing an adequate financial base for the program. This Board is aware of past controversies over particular budget items, such as regional training centers and other support services, and has chosen to move beyond those controversies. The Board's request for appropriations for FY 1991, therefore, proposes no changes in funding priorities or budget items from those funded in past fiscal years. Instead, the Board has requested an 8.4 percent increase for the entire program in order that legal services programs might have more funds to meet the day to day needs of the poor in their communities.

Q: How did you come up with the recommended overall funding level of $343 million?

A: The Corporation's request for an appropriation of $343 million for FY 1991 represents, overall, an 8.4 percent increase above the amount the Corporation received in FY 1990 after sequestration. This 8.4 percent increase is derived in the following way. There is an across-the-board increase for each budget category of about 7.7 percent to provide more funds to meet the day-to-day legal needs of eligible poor persons. In addition, the Corporation has requested that $500,000 be added to the basic field budget category to hold in reserve for programs that may be in need of future emergency funding as a result of natural disasters, such as the recent California earthquake or Hurricane Hugo. The Corporation also requests that approximately $1.5 million be added to the Corporation's management and administration budget category to permit the Corporation to meet its expected expenses for FY 1991. The request for additional management and grant administration funds includes $500,000 to fund initiatives of the newly appointed board and the development of a competitive bidding system for legal services.

HISTORY OF FUNDING

It has taken us a full decade to see a budget request for the Legal Services Corporation which is higher than the amount provided in FY 1981 ($321 M).

Q: Has the Corporation calculated what level of funding would be necessary to reach its 1981 appropriation, adjusted for inflation?

A: To calculate the FY 1981 LSC appropriation in current dollars, one uses the Consumer Price Index annual averages for 1981 and 1989 (the latest figure available): 90.9 and 124.0 respectively. This works out to an increase of 36.4%.

Applying this to the FY 1981 LSC appropriation of $321 million, the result is $437.89 million. This is the figure which, in current dollars, would have the same purchasing power of the FY 1981 level of $321 million.

SEARCH FOR NEW PRESIDENT

It is no secret that this Committee has had some degree of difficulty working harmoniously with past board members and those hired to run the corporation office. I understand that Mr. Wear has announced his resignation, effective June 30, 1990.

Q: In your search for a new president, what experience will you be looking for?

A: Following is the current position announcement for the President of the Legal Services Corporation.

President,
Legal Services Corporation

The Legal Services Corporation is seeking an experienced and highly qualified person to serve as President of the Corporation. The President is responsible for the implementation of Board policy and for overseeing the full range of activities conducted by the Corporation. The Legal Services Corporation is a private, non-profit corporation established by Congress in 1974 to provide financial support for legal assistance in civil matters to persons financially unable to afford legal assistance. With a current annual appropriations of $316.5 million, the Corporation funds more than 320 programs that deliver legal services to clients or furnish a wide variety of support services.

The President of the Corporation is its Chief Executive Officer and a non-voting ex officio member of the Board of Directors. The President has the responsibility and authority for:

(1) the day-to-day administration of the affairs of the Corporation, including the hiring of Corporation employees;

(2) making grants and entering into contracts; and

(3) communicating with the Congress, the private bar, LSC recipients, and other interested parties.

The Corporation requires that its president be a member of the bar of the highest court of a state. The following qualifications are also desirable:

(1) law degree and licensed to practice for a minimum of seven years;

(2) demonstrated ability in management and administration.

(3) experience with Congress, federal agencies, or other grant-making entities.

The maximum salary of the President is set by statute and cannot exceed Executive Level V (currently $78,200, but will increase to approximately $97,000 on January 1, 1991). Free dental and disability insurance are provided, as well as a generous leave schedule. Health and life insurance are also available, on a cost-sharing basis.

Q: And, will the individual's support of access to legal services for the poor be a major consideration in your selection?

A: Yes.

MR. WEAR'S TERMINATION AND SEVERNCE PAY

On March 23, 1990, the Legal Service Corporation issued a press release announcing the resignation of Mr. Terrance Wear as its President effective June 30, 1990-- the end of his two year contract with the Board.

Q. Mr. Wittgraf, could you please describe the circumstances under which Mr. Wear's employment has come to and end?

A. Mr. Wear announced his resignation as president of the Legal Services Corporation, effective June 30, 1990, in a letter dated March 22, 1990. A copy of Mr. Wear's letter is attached.

March 22, 1990

Mr. George Wittgraf
Chairman, Board of Directors
Legal Services Corporation
c/o Sayre & Wittgraf
223 Pine Street
P.O. Box 535
Cherokee, Iowa 51012

Dear Mr. Chairman:

I am writing to advise you that I am resigning as President of the Legal Services Corporation, effective June 30, 1990. When I came to the Corporation in July 1988, I planned to serve as its president for two years. I have realized many of the goals I set when I came to the Corporation and believe that I should now make new plans for the future.

As you know, I have been committed to marshalling the resources available for legal services to meet the day-to-day needs of individual poor persons and am glad that significant progress has been made in this area. The Congress has twice passed and the President has signed legislation requiring the Corporation to develop and implement a system for the competitive award of all the Corporation's legal services grants and contracts. This system must be put in place subsequent to the Senate confirmation of the members of this Board and will do much to improve the type of services offered and the responsiveness of grantees to the real problems of the poor. Also, the Congress appears poised to enact the McCollum-Stenholm legal services reforms. The combination of program-wide competition and the McCollum-Stenholm reforms will enable the Corporation to both provide for the day-to-day legal needs of poor persons and to end the controversy that has dogged this program from its inception.

Also during my tenure, the Corporation adopted important regulations (1) precluding the legal services programs from involving themselves in redistricting or reapportionment matters and (2) curbing the desires of some programs to handle fee-generating cases because of the revenues they generate. Also, the Corporation adopted regulations spelling out the limitations on the use of so-called "private funds" by the legal services programs. All of these measures bring the legal services program closer to its original purpose, that of helping individual poor persons with their individual problems, rather than promoting social causes or "law reform."

Mr. Chairman, I hope the new Board will continue the Corporation's policy of enforcing the law fairly and evenhandedly, without regard to whether that action ruffles the feathers of certain legal services programs, or their allies in Congress. The Corporation must continue to ensure that its grantees comply with the Legal Services Corporation Act, the appropriations Act "riders", and the terms and conditions under which these grantees receive funds. The Congress expects this from the Corporation, as was evidenced by Chairman Barney Frank's remarks during the course of this program's last oversight hearing, and the Corporation should not abdicate its responsibility in this area.

Mr. Chairman, I have enjoyed my association with the Corporation and with you and the other chairmen with whom I have served, and look forward to working closely with you and the other members of the Board during the remainder of my term. I am glad to have been able to play a role in the legal services program.

Sincerely,

Terrance J. Wear

Terrance J. Wear
President

Q. Will Mr. Wear, in fact, be fulfilling his two-year contract term?

A. Yes, Mr. Wear's current employment contract with the Corporation expires on June 30, 1990.

Q. Why then should he be entitled to the so-called "Golden Parachute" of $37,000 in severance pay?

A. Mr. Wear and I as Chairman of the Board, discussed Mr. Wear's continued employment in early March. Subsequently, Mr. Wear submitted his resignation, and the Corporation's Board of Directors agreed to accept it, subject to certain provisions in his contract which provide for post-employment compensation. Without Board action, however, the terms of that contract could have continued to be effective after that date.

BOARD'S SUPPORT FOR THE PURPOSES OF THE LSC ACT

During the past ten years, the Legal Services Corporation has not issued a single public pronouncement which acknowledged any of the positive contributions which local Legal Services Corporation programs have made to their clients and their communities. Even if one agrees that we can improve the exsisting program, during the past few years the debate over such improvements has suffered from the lack of attention to the programs' positive accomplishments.

Q: Notwithstanding any plans the Board may have to improve the progam, does it have any plans to affirm its belief in the purpose of the Act by recognizing and publishing the positive accomplishments of the thousands of staff attorneys and other advocates who are providing daily legal services to low-income people in hundreds of offices across the country?

A: The Board of Directors plans, among other things, to affirm its belief in the LSC Act and the considerable efforts of legal services attorneys by initiating on or about July 1, 1990, a monthly recognition of especially successful programs or persons (Legal Services "points of light.")

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

Q: I noted with interest the LSC's request for $1,215,000 for its law-school clinic program, up from an appropriation of $1,144,000 last year. I would appreciate information on how this program is working.

A. Since the inception of its law school clinical initiative in 1984, LSC has competitively awarded approximately $6.7 million in 120 individual grants to 58 law schools, located in 29 states, Puerto Rico and the District of Columbia. More than 5,000 students have participated in providing legal services to an estimated 44,000 clients eligible for federally funded legal services.

Q. What kind of projects are being funded?

A. The LSC law school project funds law school legal clinics that provide direct legal services for indigent clients. This allows law schools around the country to maximize the legal training flowing from providing legal services to clients, while simultaneously allowing the Legal Services Corporation to expand the provision of necessary civil legal services and encourage future lawyers to provide pro bono services to the poor. Over the years, a variety of types of clinics have been funded. General clinics provide a broad array of civil legal services, such as family law or debtor/creditor assistance, in one clinic. Others tend to specialize services for specific segments of the population, such as the elderly or Native Americans. A third kind of project focuses on a particular area of law, such as child support enforcement or housing assistance.

Q. How many law schools received funds under this program last year?

A. Nineteen schools located in 14 states and the District of Columbia received a total of $1,0533,591 in LSC funds for the academic year 1989-1990.

Q. How many law schools applied?

A. A total of 43 geographically disbursed law schools applied for funding in the academic year 1989.

Q. What was the average grant award?

A. The average LSC grant awarded to a law school clinic in the academic year 1989-1990 was $55,442.

The following information is provided to be helpful in your review of the history of LSC law school grants.

Year	No. of Applications	No. of Awards	Total Grants	Average Awards
1984	56	14	$1,200,836 (2 yrs.)	$42,887 (per year for 2 years)
1985	44	20	$1,636,906 (2 yrs.)	$40,923 (per year for 2 years)
1986	32	15	$ 619,360	$41,291
1987	39	26	$1,114,438	$42,863
1988	43	26	$1,091,648	$41,987
1989	43	19	$1,053,591	$55,442
1990	39		(Yet to be determined.)	

QUESTIONS SUBMITTED BY SENATOR PHIL GRAMM

Q. Last year, I encouraged the legal services program to become more involved in the war on drugs. Specifically, I wanted programs receiving LSC funds to help eligible clients use civil litigation to fight the drug problem in public housing and schools. The language which was ultimately included in the Conference Report accompanying H.R. 2991 called on legal services basic field programs to do more in making public housing and schools free from drug-related activities.

What are legal services programs doing with respect to the drug problem?

A. In response to the recommendations in the Conference Report accompanying H.R. 2991, LSC polled its 284 basic field programs to determine whether assisting eligible clients in making public housing and schools free from drug-related activity was a priority. Also in response to the recommendations, LSC surveyed its programs as to their involvement in cases in which drugs are an issue.

The analysis of the responses received indicates that making public housing and schools free from drug-related activities is not a priority with many legal services programs. Fewer than a tenth of the programs responding indicated that anti-drug efforts constituted a priority.

Analysis of the survey indicates that drugs are an issue in a wide variety of cases with the largest concentration being in divorce and child custody cases.

The involvement of legal services programs in cases involving litigation on behalf of alleged narcotics dealers and users remains a source of controversy. Cases in Massachusetts, Virginia, and Florida have all stirred the public policy debate as to the appropriateness of of the involvement of legal services attorneys at a time when there are such limited resources available to meet the legal needs of the poor.

Q. Given the size of the Federal deficit, all recipients of Federal funds have a responsibility to manage those funds as carefully as possible. What new management actions by the Legal Services Corporation have been initiated to ensure the proper use of Federal grant funds by legal services programs?

A. The Legal Services Corporation has taken a number of new management actions to ensure the proper use of Federal grant funds by legal services programs. LSC has enforced, for the first time, the existing regulation concerning cost standards and procedures (45 C.F.R. Part 1630). These provisions provide for the repayment of monies spent for purposes that cannot be justified.

LSC now requires its grantees, as a grant condition, to notify LSC regarding the loss of funds as a result of fraud or abuse.

LSC has developed its successful Law School Civil Clinical Project which augments the provision of legal services for the poor and enhances the Corporation's experience with competitive grant-making.

Q. What additional management actions need to be taken to ensure the most efficient and proper use of Federal funds to provide legal services to the indigent?

A. The application of Federal waste, fraud and abuse statutes to legal services programs, funds, and personnel would go a long way toward ensuring uniform national standards to promote the proper use of Federal funds to provide legal services to the indigent. Such a reform requires Congressional action.

Q. A frequent criticism of the legal services program is that its attorneys sometimes get involved in highly political cases at the expense of providing day-to-day legal services for the poor. Perhaps the best illustration of this point was the involvement of legal services programs in political redistricting cases following the 1980 census. What has the Legal Services Corporation done to prevent the use of anti-poverty funds for political redistricting and lobbying?

A. The Legal Services Corporation has promulgated a regulation (45 C.F.R. Part 1632) prohibiting the involvement of legal services attorneys in redistricting/reapportionment litigation and lobbying. The regulation was published as a final rule in August 1989. In December 1989, three legal services programs opposed to the regulation filed a lawsuit in Federal court seeking to overturn it.

Q. What further can be done by Congress to ensure that legal services programs do not again become involved in political redistricting lobbying and litigation?

A. Congress can enact a permanent ban on the use of legal services funds for political redistricting as part of the reauthorization of LSC. Alternatively, an appropriations rider forbidding the involvement of legal services programs in political redistricting could be approved.

Q. During the summer of 1988, a legal services program in Texas became involved in a lawsuit against the U.S. Department of State on behalf of individuals seeking to take a convoy of trucks to Nicaragua in violation of the economic embargo against the Sandinista regime then in power. Has the Legal Services Corporation reviewed this case to determine if this litigation was a proper expenditure of legal services funds?

A. The Legal Services Corporation undertook a lengthy and thorough investigation of the controversial lawsuit. The result was a determination that the litigation was not properly undertaken. The legal services program involved is currently facing a reduction in its LSC grant as a result of its actions in this case.

Q. Farmers have frequently criticized the approach taken by some legal services attorneys who use the burden of high legal costs to the farmer as a tactic to force a settlement even in cases where the facts may actually favor the farmer. What reforms might be enacted to solve this problem while ensuring that those poor people with legitimate complaints are not penalized?

A. The package of reforms offered last year by Congressmen McCollum and Stenholm as amendments to the program's appropriations bill has broad support among farmers as an approach toward reform.

The emphasis of the reforms is on the use of alternative dispute resolution and administrative remedies to reduce legal costs. Additionally, the reforms promote methods to eliminate unidentified plaintiffs and cases in which the facts on which the claim is based are not enumerated. The net effect would be a system which promotes speedier justice with fewer legal expenses and which would eliminate some of the unfair litigation tactics currently employed against farmers.

SUBCOMMITTEE RECESS

Senator RUDMAN. This will conclude the hearing for today. The subcommittee will recess until 10 a.m. on April 25, when we will hear from the Secretary of State.

Thank you.

[Whereupon, at 11:53 a.m., Thursday, April 19, the subcommittee was recessed, to reconvene at 10 a.m., Friday, April 25.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1991

WEDNESDAY, APRIL 25, 1990

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:07 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Lautenberg, Rudman, Kasten, and Gramm.

DEPARTMENT OF STATE

SECRETARY OF STATE

STATEMENT OF HON. JAMES A. BAKER III, SECRETARY OF STATE

BUDGET REQUEST

Senator HOLLINGS. This morning the subcommittee will take up the 1991 budget of the Department of State. The Department is requesting a total of $4,133,262,000, an increase of $1.1 billion over the 1990 level, assuming, of course, that we can repeal section 614 that holds State's 1990 budget to the 1989 rate.

Mr. Secretary, as our distinguished ranking member said prior to the hearing, we will offer that to the supplemental appropriations bill when it is on the floor. There will be a committee amendment to repeal section 614 that we will offer. Let's work it so there is no misunderstanding, because at the time the question was raised on it yesterday in the Committee on Appropriations by the chairman of the Budget Committee, on the Department of State spending so much. That is what we are going to look at closely with this presentation this morning.

The Department is seeking a 37-percent increase. Of prime importance, of course, is the $270 million requested to demolish and rebuild the Embassy in Moscow so we can move on that particular score, and the $712 million for international organizations and conferences, primarily to pay up our arrearages.

Let me yield to my ranking member here.

Senator RUDMAN. I thank the chairman. I don't have an opening statement. I welcome the Secretary of State here, and I am looking forward to hearing his testimony.

Senator HOLLINGS. Right. Senator Lautenberg.

Senator LAUTENBERG. No; just to add my welcome. The Secretary comes here during a tranquil period, of course, and this will be very easy, as usual. You are doing a good job, Mr. Secretary, full of anxious moments, this among them, and we look forward to hearing what you have to say about all kinds of things, including the Lithuanian matter and the Israeli situation.

Senator HOLLINGS. Senator Kasten.

Senator KASTEN. Mr. Chairman, I don't have an opening statement. I welcome the Secretary.

Senator HOLLINGS. Good. Mr. Secretary, we will include your statement in its entirety in the record, and you can read it or summarize it as you wish.

SUMMARY STATEMENT

Secretary BAKER. Thank you, Mr. Chairman. I will summarize my written statement, if that is all right, since the full statement will be included in the record. I am pleased to be here this morning to review with you our foreign policy priorities and our fiscal 1991 budget request for the Department.

First of all, I wanted to say a word, Mr. Chairman, about Central America. Over the past 4 months, the conventional wisdom, I think, about Central America has proven false. Just 1 year ago, few would have dreamed that Mrs. Violeta Chamorro would have been sworn in today as the democratically elected president of Nicaragua. Few would have believed that the ruthless dictatorship of Gen. Manuel Noriega could be defied and a democratically elected leadership installed over his objections. Today, I think we have an historic opportunity to help consolidate the goal of the Central American peace process: peace and freedom throughout the region. To solidify these achievements, of course, we are going to need to respond quickly, generously, and effectively to the $800 million supplemental aid package currently before the Senate.

I want to thank you and other members of this subcommittee for the effective and very expeditious way in which you moved yesterday with respect to this package. The people of Panama and Nicaragua look to these funds to smooth the transition to democratic rule and to repair the ravages of years of economic mismanagement. We see this package as an essential insurance policy against the possible reemergence of dictatorial rule in Central America.

SOVIET UNION

Turning briefly to the Soviet Union, Mr. Chairman, the Bush administration has made clear, of course, that we want perestroika to succeed. Perestroika can create a more open society. It can transform the Soviet Union into a cooperative member of the international community. In our view, the best approach toward supporting both perestroika and America's interests and values is a creative search for points of mutual advantage in this relationship, points of mutual advantage in those areas most open to superpower cooperation; the areas, for instance, of making Europe whole and free, resolving regional conflicts, negotiating arms agreements that enhance stability and predictability, supporting the rule of law in the Soviet Union, and working together on technical economic cooperation.

I would like to conclude with my opening remarks, Mr. Chairman, on the Soviet policy by making a point or two about the situation in Lithuania. First, as the President and I have repeatedly made clear, both publicly and privately, the people of Lithuania must not be denied their rights. We support the aspirations of the Lithuanian people for freedom and for self-determination, and we have never recognized, as you well know, the forcible incorporation of Lithuania, Latvia, and Estonia into the Soviet Union.

In fact, I think it is important to note that the Supreme Soviet itself has called the 1939 Molotov-Ribbentrop Pact and its secret protocols illegitimate, effectively making the incorporation illegal. So our position is clear, and President Gorbachev and the rest of the Soviet leadership know full well how strongly we feel that the aspirations of the Lithuanian people should be fulfilled.

Second, we remain, Mr. Chairman, deeply concerned about the escalation of tensions between two sides. As the President stressed yesterday, we encourage both the Soviets and the Lithuanians to go forward right now with dialog. It is our hope that the two sides can start talking. This, in our view, holds the greatest potential for the freedom that we seek for the Lithuanians. As the President also made clear, we are involved in quiet diplomacy in an effort to promote such a dialog—the only real answer to an effective resolution of this conflict.

Third, Mr. Chairman, there is a Lithuanian delegation in Moscow right now, and we don't want to see their efforts toward dialog complicated in any way. Meanwhile, the President has said that if there were to be any specific U.S. action, it would be in the economic area.

Finally, we continue to believe that perestroika, glasnost and democratization hold the greatest hope for long-term sustainable improvement in United States-Soviet relations. But we have also said, Mr. Chairman, that perestroika, glasnost and especially democratization cannot be divisible.

The reform process is not going to go forward and succeed if it is applied in some republics and, indeed, denied in others. It will not succeed if dialog becomes impossible.

NEED FOR AMERICAN LEADERSHIP

This brings me to a word or two about our fiscal 1991 funding request. Around the world, political freedom, economic growth, and global security are interdependent, and they are all dependent on American leadership to strengthen alliances and worldwide engagement. Providing adequate funding for our basic diplomatic activities will be an essential prerequisite to our ability to meet the challenges of the next decade in a world of declining East-West tensions. Effective diplomacy will determine, I think, to an ever larger degree the capacity of the United States of America to participate in the management of change.

Our investments in our own human resource base, together with the technology to back them up, are going to be critical to anticipate and to respond to the rather dynamic changes that we see in the world environment.

With respect to the categories assigned to this subcommittee, Mr. Chairman, we are requesting, of course, $4.1 billion in budget authority for State Department operations and international organizations, which is an increase, as you pointed out, of $1.1 billion over the fully appropriated levels of fiscal 1990.

Our budget request for fiscal 1991 can be divided into three parts: First, two funding initiatives designed to respond to some of the most urgent requirements on the world stage; second, our core State Department operating budget; that is, the budget essential to maintain the progress which we would argue is now bearing fruit and flourishing with democracy and free markets around the world; and finally, our budget for international organizations, international commissions and other appropriations, which is central to our efforts to maintain a leadership role for the United States of America in multilateral diplomacy.

UNITED NATIONS ARREARAGES

Turning to our funding initiatives, we ask for your support in appropriating $620 million to clear U.S. arrearages to the United Nations, to other international organizations, and to U.N. peacekeeping activities.

Actual payments to international organizations would be phased in over a 5-year period as reforms continue. As we have assured the Congress, all payments of arrearages would be directed toward special activities worked out between the United States and individual organizations.

The President feels strongly that a carefully structured arrears initiative is essential to maintaining U.S. leadership in these multilateral organizations. Over the next decade, we expect an invigorated United Nations to make greater contributions to peacekeeping efforts, to refugee resettlement, and to transnational issues, including narcotics, the environment and terrorism. The United States, Mr. Chairman, in our view, simply must live up to its solemn international financial commitments.

MOSCOW EMBASSY

Again, as you mentioned, we are also seeking $270 million for construction of a new Embassy building in Moscow. Last year, I promised this subcommittee in testimony that we would conduct a prompt review and we would submit our recommendations in our fiscal 1991 budget request. That review has now been completed. The administration has decided that tearing down the existing uncompleted new structure and rebuilding it in place is the preferable approach.

ADMINISTRATION OF FOREIGN AFFAIRS

This option offers the most practical and timely means of obtaining sufficient, fully secure space at a reasonable cost. Apart from these two initiatives, our core budget request has been pared back to what I would argue is a minimum. For the administration of foreign affairs, we are requesting $2.66 billion in budget authority for fiscal 1991. Apart from the Moscow Embassy initiative I described above, this represents a net increase of $146 million over our full current year levels. The $146 million increase, Mr. Chairman, is largely to meet price and wage increases and to protect the integrity of the foreign affairs administrative support system.

For international organizations, we are requesting $695 million in budget authority to meet our full current assessments, plus an additional $464 million for the arrears initiative that I just outlined.

For international peacekeeping activities, we request $91 million to meet our full funding obligations, plus $157 million for arrearages. We also seek $8.2 million for international conferences and contingencies to support American participation in multilateral and international conferences, including CSCE, which is going to become more and more active and more and more important.

For international commissions, we request $35.6 million to meet our treaty commitments under boundary agreements with Canada and Mexico and to cover our share of expenses as a member of international fisheries commissions.

Finally, Mr. Chairman, we make an urgent plea to this subcommittee for your continued help in restoring full appropriations for the Department for the current fiscal year.

PREPARED STATEMENT

We urgently need a repeal of section 614, and we greatly appreciate, Mr. Chairman, your efforts and the efforts and support of others on this subcommittee in our behalf. This action is absolutely essential if we are to carry out an effective, bipartisan foreign policy in these changing times.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES A. BAKER III

Mr. Chairman, Members of the Subcommittee: I welcome the opportunity this morning to review with you the Bush administration's foreign policy priorities and our fiscal year 1991 budget request for the State Department.

Appearing before this subcommittee last year, I described a world in transition. It was my opinion then and even more so now that basic American values such as freedom, democracy, human dignity, and fair play offered us the best foreign policy guide for this rapidly changing world. Over the last year, those values and the necessity for American leadership have been much in evidence. And, as I said then and repeat now, there is an equal need for bipartisanship.

The President and I have been pleased to work productively with you, Mr. Chairman, and with the Members of this subcommittee and others in Congress. We look forward to even greater cooperation on the agenda before us.

Before launching into my formal presentation on budgetary issues, let me highlight a few areas of particular concern to this subcommittee—the dramatic events in Central America, in Eastern Europe, and in the Soviet Union.

CENTRAL AMERICA

Just one year ago, few would have dreamed that Mrs. Violeta Chamorro would be sworn in today as the democratically elected President of Nicaragua. Few would have believed that the ruthless dictatorship of General Noriega could be defied and a democratically elected leadership installed over his objections.

The conventional wisdom about Central America has been proven false. In the process, we have an historic opportunity to help consolidate the goal of the Central American peace process: peace and freedom throughout the region.

To solidify these achievements, we need to respond quickly, generously, and effectively. For that reason, the President is counting on your bipartisan support for the $800 million supplementary aid package currently before the Senate. The people of Panama and Nicaragua look to these funds to smooth the transition to democratic rule and to repair the ravages of years of economic mismanagement. We see them as an essential insurance policy against the reemergence of dictatorial rule in this hemisphere. But to be most effective, as the President said, this assistance must be passed and implemented quickly.

The recent elections in Nicaragua make the extension of peace to El Salvador all the more urgent. We fully support the Central American peace process and the call of the Central American presidents for the FMLN to cease its attacks upon civilians and to enter into negotiations with the democratically elected government of President Cristiani under the United Nation's good offices. We are encouraged by the dialog announced early this month in Geneva between the Salvadoran government and the FMLN. This is the year to end the war in El Salvador. Prospects are more promising today than they have been for years. Over the coming weeks, I look forward to working with both sides of the Congress on El Salvador to meet our objectives of promoting human rights, democracy, the rule of law, and a political resolution of the current conflict.

EASTERN EUROPE

Recent events in Eastern Europe demonstrate that we are truly on the edge of a new world of democracy. Two months ago in Prague, I noted that the historic, democratic movements that we are witnessing across Europe hold great promise for all of us. But initial impulses for democracy may not be enough. If 1989 was the year of sweeping away, 1990 must become the year of building anew.

Over the past two months, free and fair elections have been held in the GDR, Hungary, and in Slovenia, a republic of Yugoslavia. A noncommunist, coalition government has been formed in the GDR and a noncommunist coalition is expected in Hungary now that it has completed two rounds of balloting for parliamentary seats. Open, freely contested parliamentary elections are scheduled over the next two months in Romania, Czechoslovakia, and Bulgaria. Poland will hold local elections for some 50,000 positions on May 27. Election observers from the United States and other CSCE countries will be following the balloting in each country to authenticate the process.

The governments of Eastern Europe, most still transitional, demonstrate clear signs of progress toward democratic government and economies based on markets rather than central planning. This process remains fragile, and successes in the political sphere must be reinforced by successes in the economic. For democracy to succeed in Eastern Europe, it must hold out the hope of a better life for the peoples of this region. Economic vitality in these new emerging democracies is essential to maintaining the long-term stability of Europe. We stand ready to help—both in advising them on policies and in helping them implement them.

There can be no doubt that the United States has a major role to play in fulfilling the promise of this new age. There are political, security, and economic challenges to be overcome and new associations to be considered. The message I brought there and elsewhere was the message they all wanted to hear: As you travel the road toward democracy, as you face these challenges, you are not going to travel alone, the American people will be with you. We are committed not just at the outset of the journey but straight through until together we bring about a new world of peace and freedom.

SOVIET UNION

I know the members of this subcommittee are especially concerned with our relations with the Soviet Union and how this relates to the construction of a new Embassy building in Moscow. Let me say a few words on this important relationship.

The Bush administration has made clear that we want perestroika to succeed. Perestroika can help create a more open society, channel claims for societal resources away from the military to civilian uses, and create institutions with little interest in military adventurism. In short, perestroika can transform the Soviet Union into a cooperative member of the international community.

We have a national interest in the spread of our core values: self-determination, democracy, individual rights and freedoms, economic liberty, market economics, and the peaceful resolution of conflicts. So we welcome the Soviet Union's movement toward accepting these values.

Realism is called for, however, in assessing the actual influence we can have on perestroika. In our view, the best approach toward supporting both perestroika and America's interests and values is a creative search for points of mutual advantage in those areas most open to superpower cooperation: making Europe whole and free; resolving regional conflicts; negotiating stability and predictability-enhancing arms control agreements; supporting the rule of law in the Soviet Union; and working together on technical economic cooperation.

We want perestroika and glasnost to succeed. But we also recognize the limits of our influence. Perestroika is an internal revolution whose success depends ultimately on the Soviet people.

Mr. Chairman, I would like to finish my remarks about our Soviet policy by making several points about the situation in Lithuania.

First, as the President and I have repeatedly made clear, both publicly and privately, the people of Lithuania must not be denied their rights. We support the aspirations of the Lithuanian people for freedom and self-determination, and we have never recognized the forcible incorporation of Lithuania, Latvia, and Estonia. The Supreme Soviet itself has called the 1939 Molotov-Ribbentrop Pact and its secret protocols illegitimate, effectively making the incorporation illegal.

Our position is clear, and President Gorbachev and the rest of the Soviet leadership know how strongly we feel that the aspirations of the Lithuanian people should be fulfilled.

Second, we remain deeply concerned about the escalation of tensions between the two sides. As the President stressed yesterday, we encourage both the Soviets and the Lithuanians to go forward right now with dialog. It is our hope that the two sides can start talking. This—in our view—holds the greatest potential for the freedom that we seek for the Lithuanians. As the President also made clear, we are involved in quiet diplomacy in an effort to promote such a dialog—the only real answer to an effective resolution of this conflict.

Third, there is a Lithuanian delegation in Moscow now, and we do not wish to see their efforts toward dialog complicated in any way. Meanwhile, the President said that if there were to be any U.S. action, it would be in the economic area.

Finally, we continue to believe that perestroika, glasnost, and democratization hold the greatest hope for long-term sustainable improvement in United States-Soviet relations. But perestroika, glasnost, and especially democratization cannot be divisible. The reform process won't go forward and succeed if it is applied in some republics and denied in others. And it won't succeed if dialog becomes impossible.

THE NEED FOR AMERICAN LEADERSHIP

This brings me to our fiscal year 1991 funding request. Political freedom, economic growth, and global security are interdependent. And they are all dependent on American leadership, strengthened alliances, and worldwide engagement. For our part, we in the foreign affairs community fully recognize that we must demonstrate to you that we can effectively manage the personnel and programs needed to carry out our agenda. Responsibility, accountability and sound management are as important to us as they are to the Congress.

Prudent commitment of U.S. resources will be essential to advance the promising changes we see on the horizon. In my testimony before the Senate Foreign Relations Committee earlier this year, I laid out the five challenges the United States will face in the 1990's: consolidating democracy, building free markets, helping the peace-makers, protecting the world against transnational dangers, and renewing our alliances. Meeting these challenges effectively will determine whether or not we are successful in advancing fundamental American values and interests across the globe. And providing adequate funding for our basic diplomatic activities will be an essential prerequisite to our ability to meet each of these challenges effectively. In a world of declining East-West tensions, effective diplomacy will determine to an ever larger degree our ability to manage change. Our investments in our own human resource base—together with the technology to back them up—will be critical to anticipate and to respond to change in a dynamic world environment.

Therefore, I ask your bipartisan support for the U.S. leadership needed to advance basic American values and interests into the next decade. And, I ask you to provide us the minimum level of resources we need to assure the effectiveness of such leadership.

OVERVIEW OF OUR FUNDING REQUEST

Foreign affairs and national defense together form the backbone of our national security. The President's budget outlines a scenario in which—assuming present world trends continue—our fundamental security requirements can be safeguarded in the context of a gradual decline in national defense spending. To ensure these optimistic trends are maintained in today's changing world, however, we must maintain and nurture our diplomatic assets. Now more than ever, they represent our country's first line of defense.

Hence, we view foreign affairs spending, not as a substitute for defense, but as a complement to reinforce the positive developments around the world which can facilitate further reductions in defense spending. We do not propose to spend the "peace dividend" before it actually exists. Rather, we seek to shape a world of reduced tensions where over time our security can be assured at a lower cost.

The returns from our modest foreign affairs spending in the postwar period have been impressive: forty years of peace, economic growth, and—most promisingly—the new wave of democracy we see on the horizon. Let us not cut corners just as our long-standing commitments are paying off.

In the context of a tight budgetary environment, therefore, the administration is requesting $20.8 billion in discretionary budget authority for International Affairs Budget Function 150 in fiscal year 1991. This represents an increase of $1.7 billion or 8.9 percent over fiscal year 1990 levels agreed to in the context of last year's budget summit.

With respect to the important categories assigned to this subcommittee, Mr. Chairman, we are requesting $4.1 billion in budget authority for State Department operations and international organizations, an increase of $1.13 billion from the fully appropriated levels of fiscal year 1990. Outlays for fiscal year 1991 are estimated at $3.3 billion, up by $255 million from the prior year.

Our budget request for fiscal year 1991 can be divided into three parts:

First, two special funding initiatives, designed to respond to some of the most urgent requirements on the world stage.

Second, our core State Department operating budget, essential to maintain the progress which is now bearing fruit in the flourishing of democracy and free markets around the world.

Finally, our budget for International Organizations, International Commissions and other appropriations, which is central to our efforts to maintain a leadership role for America in multilateral diplomacy.

SECTION 614 REPEAL

Before entering into the details of our fiscal year 1991 budget request, let me make an urgent plea to this subcommittee for your continued help in restoring full appropriations for the Department for the current fiscal year. We urgently need a repeal of section 614 and greatly appreciate your support and efforts on our behalf.

Repeal of section 614 is essential to keep the most basic gears of our foreign policy in motion:

> Section 614 leaves State without the financial resources to respond to the new challenges presented by recent events in Eastern Europe, Central America, Africa, and elsewhere. Section 614 is cutting our core programs to the bone, leaving no scope for us to shift resources to meet these fundamental challenges.
>
> Section 614 restricts USIA's efforts to promote democratic values through broadcasting and exchange programs—just as these programs are demonstrating their long-term payoff.
>
> Section 614 results in a shortfall of $129 million in our contributions to international organizations, thus adding to the substantial arrears burden which the President has committed to eliminate in order to maintain our influence with these critical multilateral organizations.

UNITED NATIONS ARREARAGES

Turning to our funding initiatives, we ask for your support in appropriating $620 million to clear U.S. arrearages to the United Nations, other international organizations, and U.N. peacekeeping activities. Actual payments to international organizations would be phased in over a five year period, as reforms continue. As we have assured the Congress, all payments of arrearages would be directed toward special activities worked out between the United States and the individual organizations.

The President feels strongly that a carefully structured arrears initiative is essential to maintaining U.S. leadership in these multilateral organizations. Over the next decade, we expect an invigorated U.N. to make greater contributions to peacekeeping efforts, refugee resettlement, and transnational issues including narcotics, the environment, and terrorism. To maintain our credibility and influence with these multilateral organizations as they address some of the greatest challenges of the next decade, the United States must live up to its solemn financial commitments.

At the 44th General Assembly, the United States and the Soviet Union cosponsored a new resolution on peace, security, and international cooperation—the first time in recent history that we have been able to agree with the Soviets on a joint U.N. declaration. In a new spirit of cooperation, we are working with the Soviets throughout the U.N. system to promote budgetary reform and eliminate duplication of functions.

We are generally encouraged by the change in tone at the United Nations. While additional progress will be needed, we noted at last fall's General Assembly that the nonaligned states had begun to focus on substance as opposed to rhetoric, and to adopt less confrontational positions. Meanwhile, the five permanent members of the Security Council continue to work closely together to promote and maintain international peace.

The United Nations has demonstrated its ability to intervene successfully in the resolution of a number of regional conflicts. We have strongly supported U.N. peacekeeping initiatives which paved the way to Namibia's transition to democracy, the current Iran/Iraq ceasefire, and the free and fair elections in Nicaragua. We expect the U.N. to play an enhanced role in eventual resolution of the Cambodian tragedy, and possibly in further demilitarization efforts in Central America. In each of these cases, United Nations involvement has supported the advancement of direct foreign policy goals of the United States.

Aside from peacekeeping, we look to U.N. leadership on a number of pressing transnational issues expected to dominate our foreign policy agenda over the next decade. These range from the important role played by the WHO on the question of AIDS; to the position of the IAEA on nuclear safety; to the role of the U.N., UNEP, and WMO on the global environment including climate change. Finally, as I noted in my recent address to the U.N., we believe there is a productive role for that body to play in the coordination of global response to efforts to stem illicit drug production and trafficking.

MOSCOW EMBASSY

We seek the support of this subcommittee in appropriating $270 million for construction of a new Embassy building in Moscow. Last year, I promised that we would conduct a prompt review and submit our recommendations in our fiscal year 1991 budget request. That review has now been completed. The administration has decided that tearing down the existing uncompleted new structure and rebuilding it in place is the best approach. This option offers the most practical and timely means of obtaining sufficient, fully secure space at a reasonable cost.

The administration has worked hard to come up with a solution to the buildings issue that meets your management concerns, Mr. Chairman, as well as our broader foreign policy objectives. Glasnost and perestroika have opened up manifold new opportunities for contact and consultation with the Soviet people and their government. Consular, commercial, and cultural exchange activities are mushrooming, placing severe strain on our present outmoded, cramped facilities.

Meanwhile, continued inaction is costing us over $1 million per month in maintenance expenses on the unused new building, plus inflation in our rebuilding estimates. We have been forced to invest in the existing old office building for essential security and life safety renovations. These security upgrades, however, do not provide us with the classified space we need to carry out our diplomacy. Nor will these temporary safety and security measures last indefinitely.

The administration's plan to tear down and reconstruct the new building is one element of an integrated solution to the space requirements for our activities in Moscow:

> Rebuilding on site is the best way to provide the new secure space we need—space which would otherwise be extremely costly, difficult, and time-consuming to acquire.
>
> Keeping the old building will provide us the unclassified space we need to meet growing public service needs.
>
> Our ongoing property negotiations should result in additional acquisitions for other longer-term needs, including housing.

The new building admittedly carries a high price tag. But our $270 million figure includes funding to ensure security during the procurement, logistics, and construction process—a vital investment not included in other project estimates. We believe that any alternative off-site arrangement which meets the administration's security and space requirements will take longer than our 65 month estimate and cost even more. For example, plans to build elsewhere add additional time and cost for site acquisition and preparation. To this must be added any costs for completing the existing new building, plus additional time to negotiate details with the Soviets.

Some members of Congress have argued that the new office building should be retained for unclassified functions. However, technology has evolved since we developed the building's design in the early 1970's, making improvements in many areas possible. And congressionally mandated physical and technical security standards have been tightened. As a result we estimate that it would require an additional $22 million just to complete the new building—thereby doubling our sunk costs in the new building. To this must be added the costs of additional work to finish and adapt the building for office space or housing, as well as the cost of the alternative secure facility. Taken together, total costs would be greater than under our alternative.

Fortunately, the unfinished new office building is located on the best side for a secure U.S. Government office building in Moscow. When the NOB is dismantled, it will provide foundations which can support a full size office building and a fully adequate utility network. By contrast, building new secure facilities elsewhere in Moscow—even right next door—would greatly increase the costs, the time required for completion, and the uncertainty to which our construction effort would be subjected.

For all of these reasons, Mr. Chairman, we seek your support for the option we have selected, and look forward to working with you and members of the subcommittee to resolve this issue on an urgent basis.

Apart from those two initiatives, our core budget request has been pared back to the minimum.

MANAGEMENT ACHIEVEMENTS

To meet the foreign policy challenges of the next decade, our nation will require a skilled, dedicated cadre of professionals to outwit, outwork, and outmanage our competition. As transnational issues including narcotics and the environment become more prominent and the ideals of political and economic freedom spread, we must have the human resources in place to play a leadership role in the world.

In meeting this task, our foreign affairs personnel are our principal assets—assets we must protect, nurture, and invest wisely. Put very simply, in order for the United States to manage world change effectively and channel it in a positive direction, we in the foreign policy community must first manage ourselves effectively.

We have taken a number of steps over the past year to strengthen management:

We are implementing a set of proposals that will strengthen implementation of the 1980 Foreign Service Act and are working to develop a more effective and broadly representative State Department. The measures we are taking should help us fulfill the commitment I made to this subcommittee last year—to promote openness and diversity in the foreign affairs community.

We are examining the need to respond to the recent dramatic developments in the Soviet Union and Eastern Europe with additional overseas staffing. To the extent possible, these prospective needs would be reprogrammed from our own resources. I must add, however, that our ability to shift resources has been severely constrained by the section 614 funding limitations I described above.

We are adjusting our management approach to security in order to keep pace with changing physical and technical threat levels.

We are continuing to emphasize the use of modern technology in our operations by modernizing our worldwide information management system and upgrading our worldwide telecommunications network.

ADMINISTRATION OF FOREIGN AFFAIRS

For the Administration of Foreign Affairs, including State Department operations and Foreign Buildings, we are requesting $2.66 billion in budget authority for fiscal year 1991. Apart from the Moscow Embassy initiative I described above, this represents a net increase of $146 million over our full current year levels, assuming repeal of section 614. Under these tight budgetary conditions, we will be able to address only our highest priority infrastructure initiatives at these request levels.

For salaries and expenses, our fiscal year 1991 request totals $1.9 billion, a net increase of $114 million over the full fiscal year 1990 estimate. Our modest increase includes the following components: $61 million or 3.4 percent for net built-in changes such as wage adjustments and inflation; a net increase of $32 million to restore funding for the Foreign Affairs Administrative Support (FAAS) system ($68 million); transfer the construction security program to the buildings account (a reduction of $45 million), and assume support for the Arms Control and Disarmament Agency Geneva mission ($9 million).

Because of budgetary limitations, we are only proposing two program increases within our salaries and expenses request for the continuation of critical infrastructure improvement projects: $15.2 million for the Department of State Telecommunications System (DOSTN) to continue to modernize the Government's commercially leased diplomatic high-speed circuit system; and $6 million for renovation of the State Department annex at Columbia Plaza, a first step toward a 10 year renovation of the Main State Building by the General Services Administration.

Included in our fiscal year 1991 base request is $14 million for continued construction of the new Foreign Service Institute campus. Budgetary limitations prevent us from proceeding any quicker with this essential project, which we estimate will result in cumulative savings of $350 million over a 30 year period.

Our base request will also enable us to continue to fund such important technology projects as the Machine Readable Visa program and the Beltsville Information Management Center at fiscal year 1990 levels.

And, as I noted above, we have also requested $270 million as a special line item in our Foreign Buildings account to cover the costs of reconstruction of our Embassy in Moscow.

The remainder of our Foreign Buildings request totals $318 million in fiscal year 1991 budget authority. Highlights of this program request include:

Capital programs—$56 million. Included in this request are funds for site acquisition and design ($13 million), funding for ongoing projects still under construction, and security projects for other Foreign Affairs Agencies ($13 million).

Leasehold payments, functional programs and administration—$264 million. This includes leaseholds on overseas rentals ($96 million), building maintenance and repair for our valuable inventory of overseas properties ($138 million), and administrative and salary expenses ($30 million).

Construction Security. Transfer of this function from the salaries and expenses account will entail an additional $65 million in fiscal year 1991 expenses, with funding to be derived largely from prior year unobligated balances.

FUNDING FOR INTERNATIONAL ORGANIZATIONS

The President has emphasized the urgency of restoring financial viability to the United Nations and other international organizations. For fiscal year 1991, we are requesting $695 million in budget authority to meet our full current assessments to international organizations, plus an additional $464 million for the arrears initiative I mentioned before.

For international peacekeeping activities, we are requesting $91 million to meet our full funding obligations, plus $157 million for arrearages. Included in our peacekeeping request is $16.6 million to meet our assessment to the U.N. Observer Group in Central America (ONUCA), a newly created military observer group which we believe will be an important instrument in meeting our goal of regional peace.

We also seek $8.2 million for International Conferences and Contingencies to support American participation in multilateral and international conferences including CSCE.

For International Commissions, we are requesting $35.6 million to meet our treaty commitments under boundary agreements with Canada and Mexico and to cover our share of expenses as a member of international fisheries commissions.

Also included in this title are resources for Bilateral Science and Technology Agreements with Hungary, Yugoslavia, and Poland ($5 million), the Asia Foundation ($14 million), the Soviet-East European Research Training Fund ($4.6 million), the Fishermen's Guaranty Fund ($900,000) and the Fishermen's Protective Fund ($500,000).

CONCLUSION

Let me conclude on this note. It is often said that there is no constituency for foreign affairs in this country. I do not agree. Just to cite a recent example, Americans of all stripes rallied behind our efforts to help restore democracy to Panama, just as we saluted the free and fair elections in Nicaragua. Clearly the American people are prepared to stand up and be counted in favor of one of our most cherished values: political freedom.

The jury is still out, however, on our willingness to make the necessary investments in international affairs to pave the way to a more promising future. The investments we now make in our own human resources will be vital to our ability to foster democracy and market principles, promote peace, protect the world community against transnational threats, and renew and reshape key relationships around the world. This subcommittee plays a vital role in that process. Let us work together on a bipartisan basis to ensure that we have the resources to maintain strong American leadership into the next century. This in turn will ensure that fundamental American values continue to flourish around the world.

Finally, Mr. Chairman, with respect to a serious problem we face with our current year funding levels, let me repeat our desire to continue working closely with you to restore full funding through repeal of section 614. This action is essential if we are to carry out an effective, bipartisan foreign policy in these changing times.

FUNDING INITIATIVES

Senator HOLLINGS. I see that about the international organizations. It certainly pays to have a President that is a former Ambassador to the United Nations. We are going to get right with all of those organizations now.

On the two funding initiatives that you talked about, what are those? I didn't get the exact figures, Mr. Secretary. You say there are two funding initiatives, the core operating budget and international organizations. You mentioned the special funding initiatives designed to respond to some of the most urgent requirements. How much is that in dollars and cents and what for?

Secretary BAKER. $620 million.

Senator HOLLINGS. That is for international organizations.

Secretary BAKER. To clear our arrearages.

APPROACH TO LITHUANIA

Senator HOLLINGS. All right. Let's get to an important subject that you covered, I thought extremely well, with respect to Lithuania. It is a touchy situation, as you can see for us, Mr. Secretary. Yesterday, we included in the supplemental, which will be debated shortly on the floor of the Senate, $10 million as standby funding for when we open up an Embassy there.

As first presented, the language required the opening of it. Of course, most of us on the committee said, "Hold up there. Let's not force feed policy in a supplemental appropriation bill," but you can sense the urgent feeling that we ought to be doing more. Can we?

Secretary BAKER. Mr. Chairman, this is a very complex and sensitive issue. Let me say that the President and others of us were quite pleased with the response of the bipartisan leadership yesterday following the leadership meeting that was held down at the White House in which many Members of the Congress said that this is a situation that really does argue for a great deal of discretion on the part of the President, because it is not a matter that is easily determined or decided.

If I might say a word or two more about that, let me frame the issue in this way, Mr. Chairman. What I think you have here is a situation where some people argue that the administration, by pressing too hard on Lithuania, could endanger Gorbachev, could endanger the reform efforts that have taken place, could endanger, indeed, some of the dynamic change that we have seen in Eastern Europe.

Others, on the other hand, say that only by pressing will we help President Gorbachev keep his conservatives at bay while advancing democratic reforms.

Now, it is not easy to know exactly how hard to press or the degree to which we should refrain from taking specific action. Building a democracy is always a long and complicated process. I think we know that well from our own experience.

We also know well how hard it is to reconcile democracy with the competing demands of different nationalities and different ethnic groups. We have experienced that in the United States. That is why the President and I feel, Mr. Chairman, that we must follow a balanced and measured approach to Lithuania and to maintain perspective, to the extent that we can, on the numerous interests that we have at stake here—interests that are very important to the United States of America.

We also know, though, that for us to really move beyond containment and to welcome the Soviet Union as a full and equal member of the family of free nations, this process of democratic reform is going to have to continue, and it is going to have to ultimately succeed. We know, as well, that for that to happen, the Soviets are going to have to allow the Lithuanians to fully exercise their right of self-determination.

So we have made it very clear in our discussions with the Soviets that reaching a settlement with the Lithuanians is fundamental not only to the future of glasnost and democratization, but also to the future of our relations and the Soviet Union's place in the world.

So it is a matter that we will have to continue to consider carefully, hopefully, in consultation with the bipartisan leadership of the Congress, and make sure that when and if we move, we move in the right way, to the right extent, and to the right degree.

PROSPECT OF OPENING AN EMBASSY IN LITHUANIA

Senator HOLLINGS. The question is: Is there something we in the Congress can do, or in the alternative, should there not be specifically that language, the permissive language that does not require but provides for the opening of an Embassy in Lithuania? Can you support that language?

Secretary BAKER. We did not support that language, but we didn't support it primarily because of the reasons that I have just outlined with respect to the complexity and sensitivity of this matter. The fact that it is going to, indeed, be the direct approach is going to have to be developed, hopefully, in close consultation between the legislative and executive branches of the Government.

Senator HOLLINGS. Since it doesn't require, but is a standby funding, does that help?

Secretary BAKER. We shouldn't prejudge. I understand what you are saying—that it is permissive and not mandatory, but if we were to decide to go that route, that is the route of recognition, the route of appointing, for instance, an Ambassador. One of the Members of the Senate who attended a meeting with me yesterday suggested that we appoint an Ambassador to Lithuania, which, of course, gets into the question of recognition and all the rest. And then, also, it puts us in the position of having to decide how we are going to implement a decision.

We ought not to make decisions that we don't have some reasonable prospect of implementing, and right now, I don't think we have a reasonable prospect of seeing a U.S. Ambassador resident in Vilnius.

BYRD AMENDMENT IN 1990 SUPPLEMENTAL

Senator **Bumpers**. Mr. Chairman, are you asking him about the Byrd amendment in the supplemental appropriations markup?

Senator **Hollings**. Yes.

Senator **Bumpers**. OK. I'm sorry.

Senator **Hollings**. With that balanced, cautious approach, which I agree with, then having been included in there, it wouldn't look good for us to fight it and try to kill it, would it? Is it necessary that that amendment be killed?

Secretary **Baker**. Well——

Senator **Hollings**. I know you didn't support it. It is in there now. I am asking now: Do you want to kill it?

Secretary **Baker**. We did not support it. If you are asking me whether or not we can live with it when it is permissive in nature, the fact that it is permissive and that it depends upon Presidential determination as to whether it is implemented would, I suppose, clearly indicate that we can live with it, but we didn't support the amendment.

Senator **Kasten**. Mr. Chairman, I might say that I don't think any of us have seen the final language on that.

Senator **Hollings**. Yes; we did.

Senator **Rudman**. We have it. Maybe the Secretary would like to see the final language.

Secretary **Baker**. My last statement, Mr. Chairman, rests on the language being as you described it.

Senator **Rudman**. It is accurately described. It is quite permissive.

Senator **Hollings**. Yes; I think that is well taken that we don't try to make a Federal case out of it.

Senator **Lautenberg**. It just puts things at the ready is what it does.

Senator **Rudman**. The original document was, in fact, quite different from what was described.

ASSISTANCE FOR PANAMA AND NICARAGUA

Senator **Hollings**. Now, with respect to what they call a done deal, we have got the moneys for Panama. We have got the moneys for Nicaragua, but there was criticism by the chairman, both of the full committee and subcommittee, as to how those moneys were arrived at.

There will be a later submission on both. I hope, Mr. Secretary, the Department will be very accountable and have detailed breakdowns of what it plans to do. It is a comprehensive approach and includes tourism promotion as it was described by the Senator from Texas as the leading industry and really needed to recover the full economy. We weren't trying to just take care of the banking needs, but the needs of the people generally, and trying to revive the economy.

But we need to have a more detailed statement, I think, that shows the thorough study. That is just a suggestion along that line.

DIPLOMATIC AND FINANCIAL SUPPORT FOR EASTERN EUROPE

On Eastern Europe, I don't see any increases. I see only two additional positions in Poland. Could it be in some other budget? Specifically, I have been very critical of the National Endowment for the Democracy, because all they could do is get political party heads to meet and eat. Now they have a mission, and they have already done extremely good work in Czechoslovakia and in Hungary. I don't see any increases for the Department itself.

Tell us about Eastern Europe now and all these dramatic happenings there. Are we beefing up our diplomacy?

Secretary **BAKER**. We are to a considerable extent, Mr. Chairman. You recall that it was only 1 year last July that the President went to Poland and Hungary. It was only December, of course, that the wall came down, and now we have the unification of Germany taking place; we have free elections scheduled in Romania and Bulgaria. Elections have already been held in Hungary and in GDR. We have elections scheduled in Czechoslovakia.

All of these countries are moving to democracy and freedom, and we are supporting that both diplomatically and financially.

We have been part of an effort by a group of 24 countries to raise funds for Poland and Hungary, and we have been extraordinarily successful in pulling together through this multilateral effort some $14 billion, including about $900 million of direct contributions from the United States, for those two countries. If you include in there the rescheduling of the financial institutions and official credits, the number goes up to about $23 billion for those two countries.

We are providing or we have provided $80 million in humanitarian assistance to Romania; we have $300 million in our budget request for fiscal 1991 for assistance to Eastern Europe. There are other things we are doing through the granting of MFN status and Jackson-Vanik waivers to a number of these countries.

So we have a major effort going with respect to the dynamic and, frankly, revolutionary changes that are taking place in Eastern Europe.

Senator **HOLLINGS**. Very good. I have got some other questions. Let me yield to my ranking member and then the other members. We have a good attendance.

REPEAL OF SECTION 614

Senator **RUDMAN**. Thank you, Mr. Chairman. Mr. Secretary, just very briefly on section 614, I won't go over the history of that. We really shouldn't have lost that by a switch of merely five votes last year, but we are going to face a point of order, we understand, raised by the chairman of the Budget Committee. I would expect that both the Secretary of State and the President of the United States, if necessary, would come to our assistance to ensure that this rather onerous provision, which has a history rooted in the

Vietnam war and which has essentially no current application whatsoever to the appropriation process, ought to be repealed. I expect we are going to have that support.

Secretary **Baker**. You will have that support, Senator Rudman, and I would like to lobby my colleague and friend from Texas while I have an opportunity right here today. Maybe I don't need to, but in case I do, I want to make the point to you, if I could, Phil, that this money was included in the 302(b) allocations last year and was actually appropriated by the Congress, and we have a letter up here from the Director of the Office of Management and Budget to the effect that generally, this is an extraordinarily unique situation. So I hope we don't have a knockdown, drag-out on the floor on the budget waiver of Gramm-Rudman-Hollings.

Senator **Rudman**. Senator Kasten plays the part of the hyphens. [Laughter.]

Secretary **Baker**. And we have got Hollings and we have got Rudman, and we have got to have Gramm.

Senator **Rudman**. We might have a knockdown, drag-out fight, Mr. Secretary. We don't care about that, as long as we win. We would very much like your support.

Secretary **Baker**. And you will have that.

APPROACHES TO SELF-DETERMINATION OF SOVIET REPUBLICS AND BALTIC STATES

Senator **Rudman**. I want to just move on very briefly to this question of Lithuania, which the chairman has raised. I want to ask you a normal policy question, a specific question: Has our policy evolved at this point in terms of responding to the kinds of things that are going to take place, obviously, in the next several years or sooner, in some of the Soviet republics—the Ukraine, Georgia, Azerbaijan. The history of their absorption into the Soviet Union is, of course, quite different.

Some of them go back to the empire; some are postrevolution, but they are quite different in terms of their composition and their timing as opposed to the Russo-German Nazi Pact of 1939, which, obviously, was illegal under international law from the time that it happened.

Do we differentiate in what our Nation's policy should be as to the violations of the human rights and the rights of self-determination of these Soviet republics that I mentioned as opposed to those Baltic States?

Secretary **Baker**. There is a difference, Senator Rudman, not in the way that you phrase the question. We do not differentiate with respect to violations of human rights wherever they might take place. There is a difference in our approach to the question of independence for Russian republics between the view we have with respect to the Baltics, where the juridical situation is different, and we have never acknowledged their incorporation into the Soviet Union and, let's say, the situation with respect to republics such as Azerbaijan or perhaps Armenia.

The United States has recognized the boundaries of the Soviet Union save for the Baltic States' incorporation. Let me back up and say it this way: The United States has recognized the boundaries of the Soviet Union since 1933. We have expressly not recognized and reserved, and refuse to recognize, incorporation of the Baltic States in the Soviet Union.

Senator **Rudman**. Mr. Secretary, I ask the question only because I think it is important that we have a policy that distinguishes between the two. There is a great difference between the yearnings for independence, let's say, of the people in Azerbaijan or Georgia or people of Estonia or Latvia. I think your human rights policy we would all agree with, but our diplomatic policy would be different.

LITHUANIAN NEGOTIATIONS AND SOVIET SECESSION LAW

Coming back to Lithuania, what is the policy in our negotiations? And maybe you can't speak of this publicly, but in confronting the difficult problems that Lithuanians now face under the Soviet constitution, it seems to be a catch 22 situation. They can negotiate; they can have a referendum; but then it goes to a Soviet constitutional body that it would seem highly unlikely would ratify the actions of the Lithuanian people.

So even if they do what the Soviet constitution asks them to do, they end up in a ratification that would be hostile, to say the least. Are we addressing that?

Secretary **Baker**. We have not blessed the secession law that the Congress of Peoples Deputies and Supreme Soviet have passed.

We do support the idea that there should be a mechanism and a process by which self-determination can be expressed and attained. But we are not blessing the particular secession law that has been passed. We think that the process and mechanism that is adopted must be a real process and mechanism that can provide for true independence, genuine independence, and it cannot be overly onerous.

I don't want to make judgments here this morning about the Soviet secession law, except to say that we have never blessed it.

Senator **Rudman**. Most experts say that it would almost be a political impossibility to get that ratification as it is currently drafted.

Secretary **Baker**. There are some provisions of it that we, obviously, have questions about, such as the requirement for a super majority approval by the Congress of Peoples Deputies after a republic itself has voted in a referendum, and a requirement, as I understand it, that 10 percent of the minority ask for a subsequent referendum or a plebiscite immediately following a vote by two-thirds. So we see some problems.

Senator **Rudman**. I asked the question, obviously, because I fully support and I think most of the Congress supports the administration's approach, but the Soviets have to understand that if Mr. Gorbachev talks about following a process then the process has to have some chance of ending up in democratization and independence or else the process becomes a charade. I guess that is my point.

INTERNATIONAL VISITOR PROGRAM

I want to talk briefly about the international visitor program without belaboring it, because it is obviously way below your pay grade, and I am sure you have nothing to do with it. But the fact of the matter is that the U.S. Embassy in Moscow did, in fact, assist in picking for the USIA some journalists—I believe eight—whose views on the world are somewhat out of vogue.

In fact, they haven't been current in Europe for 50 years. They are unquestionably antisemitic; they are being funded by USIA to travel around the country, although I see that some States have had the good sense to disinvite them. What is the State Department's official policy on inviting people who have such strongly antisemitic views and to paying them with U.S. taxpayer dollars to travel in this country?

Secretary **Baker**. Senator Rudman, let me answer your question by saying I think there are two questions here. One is the question of the rise of antisemitism generally within the Soviet Union. This is happening as a consequence, frankly, of glasnost and democratization and the opening up of debate and, to some extent, the opening up of society in the Soviet Union.

We have raised this problem with the Soviet leadership. I raised it with the leadership when I was in Moscow in February, and I have to tell you that I do not believe that the leadership of the Soviet Union is encouraging this and that they view it negatively, as do we. We will continue to raise that issue with them, and I think to some extent, it is partially perhaps a consequence of the rise of Russian nationalism.

The particular question you have asked has to do with the delegation that has come here sponsored by the U.S. Information Agency. As you know, we bring people with a wide range of opinions to the United States. We have a strong tradition and commitment to free speech in the United States. But having said that, let me emphasize that bringing these people here doesn't in any way indicate that we would approve of or condone their views.

In this particular instance, I find the views voiced by some of these individuals to be deeply offensive—just as you do. All the more so, I think, because I have repeatedly raised with the Soviet leadership our concerns about the general growth of antisemitism within the Soviet Union.

So let me just conclude the answer by saying to you that we will continue to take a careful look at these kinds of visits in the future. We must balance the expression of different points of view and the exposure of people to how a free society works against the nondesirability of facilitating those who actively promote hateful and racist propaganda.

Senator **Rudman**. I appreciate your answer, and I am sure, as I said, it was way beneath your pay grade as to who these people were. Let me observe that I think there is a great difference between discouraging and, obviously, permitting free speech. We do that, of course, and have done it with our visa requirements over the years, some of which have been criticized, and I think that is fine. I happen to believe that anybody who wants to speak about anything in this country ought to have that right, but I don't think we ought to be paying for it.

I think that is my point, and I would hope that you, Mr. Secretary, would look rather closely at that.

Senator **Gramm**. Warren, I think we could coin the phrase, "If they pay, they pick the views. If we pay, we pick the views."

MOSCOW NEW OFFICE BUILDING

Senator **Rudman**. Finally, let me just ask one brief question, and I will have some for the record. There were some members of the House Appropriations and House Foreign Affairs Committees that appear to favor retention of the current building in Moscow for unclassified purposes and to construction of a new chancery on an adjacent site. I guess they don't want to tear it down; they want to use it as an official building for normal administrative work.

I don't have a view on that. Senator Hollings and I, of course, were on the forefront for the last 4 years of the effort to get the building torn down. I know Senator Hollings feels quite strongly about it, but I just wondered how you felt, Mr. Secretary.

Secretary **Baker**. Well, I think I have, and I hope I have, made our views very clear. We promised all of the relevant committees that we would look at this as a new administration coming into office, and we have looked at it very, very closely. The main problem we have right now, I think, as a country and as a Department, is that we have spent a lot of time looking, and we haven't done any acting, and the time for looking is over. It is time to act.

The solution we have come up with is not going to make everybody happy, but when you look at cost and you look at time and you look at security considerations and political realities—when you look at those four things, I think it is the best choice. It is one that I know has support on this committee. It doesn't have support on some of the committees, but I would like to say, Senator, I think the executive branch has now made its decision. We are going to stick with it. The ball is up here in your court. We really do need to get moving. We need to get a resolution of this problem.

Senator **Rudman**. We support that, Mr. Secretary. Thank you, and thank you for all you do.

Senator **Hollings**. Thank you.

Senator Lautenberg.

QUESTION OF SANCTIONS

Senator **Lautenberg**. Yes; thank you, Mr. Chairman.

Mr. Secretary, hearing the administration's commitment this morning not to impose sanctions, is there a point at which that view could change? I mean, the noose is tightening. Do you see a point at which, let's say, the summit is in jeopardy? Do you see a point at which the arms talks are in jeopardy?

Secretary **Baker**. Let me say, Senator, that the situation isn't static. The President has not made an irrevocable determination that under any and all circumstances he would not take any specific actions. That is not the case at all.

He has, after careful consultation with our allies, and I might add there that there is zero, if any, support for specific actions by the allies, and after close consultations with the Congress, and you are familiar with the views that were expressed in the leadership meeting yesterday, he doesn't think that now is the time to take specific action.

If that time ever arrives, I think it is his view, without trying to prejudge a Presidential decision, that there are some things that are very much in the interests of the United States of America and very much in the interests of world peace, and one of those is the whole category of arms control discussions.

It is in our interest and in the interest of the free world. The Soviet Union is leaving Eastern Europe. We don't want to do anything that might adversely affect that process. We want it to continue.

It is in our interest and in the interest of the free world that the Soviet Union is going to have to destroy 40,000 tanks if we get a conventional forces agreement, and we are moving close to it. We don't want to do anything that would adversely impact that. It is in our interest and in the interest of the free world if we can get a reduction—a 50-percent reduction—in some of these strategic nuclear weapons.

So these things we view differently from some of the issues we have between the United States and the Soviet Union respecting economic matters.

ACTION BY OBLIQUE MEANS

Senator **LAUTENBERG**. Is there any way that we can? I agree with you in terms of the objectives; to try and make the world more peaceful is a serious objective, but it can't be at the sacrifice, as we have seen in history, of independence or the freedom of individuals or nations. Is there an oblique way of getting at this?

Should we encourage the Norwegians to supply petroleum? Are we prepared ourselves to offer some relief from the petroleum blockade that has taken place?

Secretary **BAKER**. I think that is another area that would be appropriately considered, Senator Lautenberg, if things cannot move toward peaceful resolution and toward dialog.

There were expressions yesterday at the leadership meeting by some that if we are going to do something specific, it would be far preferable to try and find ways to assist the Lithuanians than to find ways to shoot ourselves in the foot by being the only country to foreclose economic and commercial dialog.

So that is a matter that has been discussed. Now, you have a major problem when you start talking about supplying goods or petroleum to the Baltic States, of having to get it in. How do you get the products in?

Senator **LAUTENBERG**. Through Poland, perhaps?

Secretary **BAKER**. It really hasn't been satisfactorily determined. There has been no determination yet that it can be done. There is some interest on the part of some Scandinavian countries in doing that. If the United States were to decide that this would be an appropriate response, I suppose that we would first want to know, again, that we would not be taking an action that could not be implemented.

Senator **HOLLINGS**. We couldn't get D'Amato in. How can we get oil in? [Laughter.]

Senator **LAUTENBERG**. We couldn't slip him in, but we can slip oil in.

Secretary **BAKER**. Mr. Chairman, we didn't try. [Laughter.]

Senator **LAUTENBERG**. Mr. Secretary, I agree with one thing you said, and that is administering punishment to the Soviets isn't necessarily even going to accomplish what we wanted for Lithuania or to accomplish what we want for the world at large. But if there are things that we can do, again, like encouraging the Norwegians or encouraging the supplies, I think that we will have a real commitment there that is not fully understood, and I appreciate the President's measured response.

We have a lot at stake in there, but we also have our leadership in terms of freedom at stake, as well.

Secretary **Baker**. That is very true, Senator Lautenberg, and let me just say one more time, we are doing everything we know how to do diplomatically to try and get a dialog, and we will continue to try and do that.

ROLE FOR THE UNITED NATIONS

Senator **Lautenberg**. Do you see, possibly, a role for the United Nations in this as a mediator for the Baltics?

Secretary **Baker**. It is pretty hard to see that when the Secretary General of the United Nations has taken the position that this is an internal matter for the Soviet Union.

Senator **Lautenberg**. I sometimes think we ought to pare them back, too, but sometimes I don't think we ought to.

Secretary **Baker**. This is one of the problems we face, Senator Lautenberg. As you well know, there are a number of countries that do not share our political view of the Baltic States' situation.

EXTENSION OF REFUGEE ACT

Senator **Lautenberg**. You expressed serious concern by this country about the rise in antisemitism in the Soviet Union. With that in mind, I would have to ask if we could get your support in an extension of the Refugee Act which has a presumption included in it that seems to have worked well. We haven't quite caught up with the backlog. That expires in 1991. I was in the Soviet Union just 4 weeks ago. We found out that it is working and that it does expedite things.

Can we get your help in that? I know there are other proposals around, but I think this one works well; it is pretty obvious.

Secretary **Baker**. Yes, sir; we see the emigration of Soviet Jews to Israel, Senator Lautenberg, as an enormously positive development. We encourage that. We encourage it in our dialog with the Soviets.

DIRECT FLIGHTS

Senator **Lautenberg**. How about the direct flights?

Secretary **Baker**. We support the concept of direct flights. We have spoken to the Soviets about that. We think we were instrumental in assisting the establishment of flights from Hungary through dialog with the leadership there.

The Soviets, of course, have not seen fit to implement the El Al-Aeroflot agreement yet. We wish they would. It was my understanding, following meetings we had here in the United States with Soviets in early April, that they were going to begin discussions with Israel with respect to whether or not they could find a basis on which to implement that agreement.

SANCTIONS AGAINST IRAQ

Senator **Lautenberg**. We heard from President Hussain of Iraq, too often, too belicose, and on April 2, he threatened to scorch one-half of Israel with a binary chemical weapon. It is an installations of chemical warfare material and not a nuclear attack.

Recently, we saw him attempting to smuggle trigger devices. The testimony of numerous arms experts proves that Iraq is developing or already has nuclear capabilities despite their denials. If they have proven that they are willing to use these weapons against people in Iran, do you believe that these statements warrant imposition of some kind of sanctions against Iraq? If so, what kind of sanctions might they be?

Secretary **Baker**. We have some sanctions in place, Senator Lautenberg, sanctions having to do with their purchase of items from our munitions list. Let me say that, at least, the use of chemical weapons we view very seriously and it is very disturbing to us. Having said that, I must tell you what Saddam Hussein told Members of the Senate who visited with him.

Senator **Lautenberg**. Last week.

Secretary **Baker**. Last week, and I am not vouching for these statements. I am simply reporting to you what was reported to us, and that is that the statement that was made about using chemical weapons was made on the assumption that Iraq would have been attacked with nuclear weapons; at least that is what he says. "If we are attacked by nuclear weapons, we will respond with the only thing we have, which is chemical weapons."

I am not taking sides in that argument. I am just stating that.

Senator **Lautenberg**. I hope you do take sides in that argument.

Secretary **Baker**. That is what some of your colleagues have told me the dialog was about. Again, we view that very seriously. Threats to use chemical weapons are quite disturbing, particularly threats coming from a country that has used chemical weapons. We have sanctions with respect to the purchase of items on the munitions list. We are doing everything we can through the missile technology control regime, and through the Australia group, to block Iraq's efforts to achieve a chemical and, in fact, even a nuclear capability.

Senator **Lautenberg**. By the way, if I might report——

Secretary **Baker**. And I said I was not taking sides. I am not taking sides about what was said.

Senator **Lautenberg**. OK, because what I heard said was that the word was out to the field commanders in Iraq, "Load up. If we ever see any signs of an attack on our soil, let it roll," and that is quite maddening when you think about the destructive capability of these weapons.

How about credits from the agricultural credits, Exim credits, because by providing them these credits, it effectively frees up their hard currency for other purposes. Would the administration support the elimination of some of these credits?

Secretary **Baker**. We are taking a look at that, Senator, in light of the nuclear technology, in light of the statements that you have just mentioned, and we are examining that issue right now.

Senator **Lautenberg**. OK. I will close, Mr. Chairman, with this question about: What do we do? What does the United States do in a situation like this? It doesn't sound like juggling money with these guys is going to do very much for us.

Secretary **Baker**. What we do is what I just mentioned. We work through the missile technology control regime. What we do is what we do with any other country that is trying to acquire nuclear weapons capability; we work through the establishment to inhibit production of these weapons.

Senator **Lautenberg**. I hope the message is very clear to Iraq. It is discouraging when we see our friends in France commend Qadhafi and others when they do a deal.

Secretary **Baker**. Yes, sir.

Senator **Lautenberg**. I hope the United States would let them know in no uncertain terms that we are not going to permit any use of such weaponry.

Secretary **Baker**. We have made it clear, too, Senator Lautenberg, that the recent actions that I have just referred to by Iraq have damaged their relationship with the United States. It is not just a case of working against proliferation. We are also doing what we can to implement that.

Senator **Lautenberg**. Thank you, Mr. Secretary.

Senator **Hollings**. Thank you.

Senator Kasten.

INELIGIBLE LIST FOR EXIM BANK LOANS

Senator **Kasten**. Mr. Secretary, thank you.

I just want to follow up on what Senator Lautenberg said. What if we removed the waiver for Iraq from the list of countries in last year's appropriations bill that were ineligible for Exim Bank loans as well as for other kinds of loan guarantees because of their terrorist sponsored activities. Clearly, because of their provocative activities over the past couple of months, it seems to me that they should not be removed from that list.

I do not know if this administration supports my position at this time, but would you agree with me that we ought to put the Iraqis back on the prohibited list for these loans until they change their practices?

Secretary **Baker**. That is one of the things we are looking at, Senator Kasten, and of course, if they are, that will impact their eligibility for CCC credits.

Senator **Kasten**. This decision is one that some people would like to, or at least are considering making as part of the supplemental appropriations bill that may be on the floor today or tomorrow. It would be helpful if we knew what the administration's position was with regard to this troubling issue. It was relatively noncontroversial last year when we took them off that list, but because of what we have been through in the last couple of weeks, there are some that even want to go further and put them back on that list and then put additional prohibitions on different kinds of trade and different kinds of agreements and different kinds of exchanges.

But I think at least with regard to putting them back on the prohibited list, it would be important for us to know the position of the administration as of today.

Secretary **Baker**. Well, we will take a look at it. If we can do any better than telling you that it is under review this afternoon or in the morning, we will do so. But as far as I know, we are still in the process of taking a look at that, and that, of course, would impact on the question that Senator Lautenberg had.

LITHUANIAN ISSUE

Senator **Kasten**. Let me, if I can, build on what Senator Rudman was talking about with regard to Lithuania and preface this by saying that it is clear that all of us are concerned about the administration's seemingly timid response to the Soviets with regard to Lithuania.

Senator Rudman made a key point, one of which I believe is at the heart of the issue, and that is, what is the legal difference between the Baltic States and the other so-called nationalities problems in the Soviet Union? The administration, it seems to many of us, is linking this up and calling the Baltic States just one more nationality problem that President Gorbachev may be confronting.

We don't use the words "illegal occupation", for example, as we did a couple of years ago. We always spoke about this in resolutions, and now we don't talk about the illegal Soviet occupation of the Baltic States—the legitimate rights of the Lithuanian people.

Secretary **Baker**. Yes; we do, Senator.

Senator **Kasten**. The illegal occupation issue needs to be emphasized more.

Secretary **Baker**. Senator, we do talk about the legitimate rights of the Lithuanian people and rights to self-determination, our nonrecognition of their incorporation. We do not treat them as just any other republic. We continue to make the distinctions that I have already outlined here this morning.

It is very, very different, and we make that point consistently to the Soviets, because there is a significant difference, in our eyes at least, from a juridical standpoint, between the Baltic States and the other republics, and we continue to express that.

Senator **Kasten**. If we can't appoint an Ambassador, and I understand why we can't, why don't we send a special envoy, a high-ranking individual or possibly a person that once served in Government and is now in the private sector as a special envoy, a President's representative and send him or her to Lithuania and meet with the Lithuanians in an effort to establish a de facto ambassadorial level of recognition?

I know this has been discussed. Why haven't we gone forward with this idea?

Secretary **Baker**. The Baltic States still have representatives here in the United States that we talk to and deal with.

The Prime Minister of Lithuania may be coming to the United States, in order to establish a dialog with representatives of the

Lithuanian people, we don't need to send a governmental representative to Lithuania, Senator.

We have ways, even now, of making our views known to the people in Lithuania.

VISA FOR THE PRIME MINISTER

Senator **Kasten**. With regard to the Prime Minister of Lithuania, it is my understanding that she applied for a United States visa yesterday, and the State Department issued a statement with regard to her application. The State Department position said our Embassy in Moscow had no record of receiving a visa application within the past few weeks for Mrs. Prunskiene to travel to the United States. We believe Mrs. Prunskiene's remarks Monday at the Moscow airport resulted from a misunderstanding on her part.

Now, you just said that she may be coming. What misunderstanding is the State Department spokesman referring to? And let me just add—it is my understanding that on April 20, in Oslo, Norway, in an interview with the Voice of America, Mrs. Prunskiene said that she was denied both a Canadian and a United States visa.

Secretary **Baker**. Yes.

Senator **Kasten**. So there is a question here as to what was said in Moscow, what was said in Norway, what was the Voice of America interview about, and then what is your position as of yesterday and then particularly, what is your position today?

First of all, what is the misunderstanding?

Secretary **Baker**. The reason I know about it, Senator, is because I checked into it yesterday, having seen the same report that you have just mentioned which indicated she had been denied a visa. As best I can determine, that is simply not the case. I learned this morning at about 8:30 that our Consul General in Leningrad has been told that she will apply for a visa either tomorrow or on the 27th—the 26th or 27th—looking to come to the United States the end of this month, and if she applies, the visa will be promptly granted to her.

At least that is the instruction I gave at 8:30 this morning. I don't think that she has ever applied for one and was denied or delayed or turned down, so I can't answer your question about why that report might have surfaced. As best I can tell, she has not. She has not applied, certainly, through the Embassy in Moscow.

Senator **Kasten**. Is the question here her applying for a visa as an individual or her applying for a visa as an official of the Government of Lithuania? Would there be a difference that the State Department would make? I don't think we should. I think that we should give her a visa if she applies as an official of Lithuania and not as a Soviet citizen, or if she applies as both. If she applies, are you going to make a differentiation in terms of the technicalities?

Secretary **Baker**. I think there is a certain question of recognition. It is my view that she will be granted a visa any time she wants to come and just as soon as she indicates she wants to come.

The question of whether she would be traveling, I guess, on a diplomatic or a normal passport gets to the question of recognition, and unless we have recognized the government through formal recognition, I would think that we would grant her a visa as a citizen of Lithuania and not on a diplomatic passport. That is a nuance that I am not extraordinarily familiar with, so let me reserve a little bit, but I think it really turns on the question of whether or not we have recognized Lithuania.

Senator KASTEN. I think in terms of the misunderstanding that I referred to, that doesn't make any difference what that misunderstanding was, if our position now is to grant her a visa.

Secretary BAKER. Absolutely.

Senator KASTEN. Granting her a visa is important.

DEVELOPMENTAL POLICY IN EASTERN EUROPE

Let me just ask one question on another subject. You and I have talked about the European Reconstruction Development Bank. I just wanted to go back to an interview on March 17 with National Public Radio. President Bush said the following with regard to western loans to the Soviets: "This concept that we ought to go loaning money or giving money to the Soviet Union, no, I don't accept that. I don't think that it's in America's interest and I don't think it's needed to encourage reform and perestroika and glasnost in the Soviet Union."

That is the end of the quote. He then went on to say that the Soviet Union "has a long way to go before sound loans can be made there."

I think that most of us agree, and I know that most Members of the Senate agree that without marked reforms in the Soviet Union, the western financial aid to the Soviets at this time would be like just pouring money down the drain. Yesterday's lead story in the Washington Post was titled "Gorbachev Slows Economic Change, a Shift to Market Pricing Delay."

I think all of us were dismayed by that article. Given the President's statement that loans to the Soviets would seem to be out of the question, both the United States and the East Europeans now have agreed to a new development bank for Eastern Europe that would also provide loans to the Soviet Union.

Does U.S. participation in this bank contradict the President's stated views with regard to loans? It seems to me that we are creating a situation which is exactly the opposite of what we were talking about a couple of months ago when a leading House Democrat talked about loans and foreign aid to the Soviet Union and the White House immediately said no to that, as did many in the Senate.

What is our position with regard to loans to the Soviet Union and why are we allowing the European Development Bank to go forward with them?

Secretary BAKER. Senator, you and I have had some discussions about this, and perhaps we both might have agreed that had we had the option as a matter of first impression, it would have been a good idea to set this up as a facility of the World Bank, but that was never an option. It was never an option because the European countries wanted a European Development Bank to assist in the most dramatic transformation that has taken place in the East-

West context in 45 years, and that is the freedom of the countries of Eastern Europe.

So it was, to some extent, a fait accompli, and the United States was faced with a situation of either participating in assisting development in Eastern Europe or staying out and trying to do it somehow on our own, where we do not get the benefit of leveraging that you well know exists in the international financial institutions.

The President made what I think was absolutely the right decision, and that is not to opt out of development assistance through a multilateral development bank for the countries in Eastern Europe. The countries that are primarily going to be assisted by this bank are Czechoslovakia, Poland, Hungary, Bulgaria, and Romania, not the Soviet Union.

There have been significant restraints put upon Soviet participation through the process of negotiation that we have gone through in determining what the United States' participation will be. In fact, against the wishes of some of our European friends, we have restricted Soviet participation to the amount of their paid-in capital. So what we are saying is: They can borrow the hard currency that they themselves put into the bank.

That is not making the loans available to the Soviet Union on concessionary terms. It is certainly not assistance to the Soviet Union. What we are really saying is, "You can borrow, Soviet Union, but you can only borrow what you yourself put in. You can borrow your own money."

Senator KASTEN. Let me interrupt, because that sentence has to be completed. "You can borrow what you put in, your own money for the first 3 years," after which a vote will occur, an 85 percent vote, and we have 10, which means that unless we can get the Japanese to vote with us——

Secretary BAKER. It doesn't have to be the Japanese, Senator. It can be one other country. We can bar any expansion of the Soviet right to borrow by ourselves if we get one other country to join with us, one.

So we think that we negotiated some very, very stringent terms, some good terms. We required that there be a strong focus on the private sector. We put it actually into the charter of this bank. We have required that the charter of lending restrictions, Senator, contain provisions that say that only countries that are, in fact, reforming and moving to democratic systems, including the Soviet Union, will be eligible for lending.

If the Soviets don't continue to reform and move toward democratization, they won't be eligible. So I think that we have, under the circumstances, cut about the best deal that we could possibly have cut. It has been a hard negotiation, so the choice that you will have, it seems to me, is either the United States will participate in a multilateral development bank to assist this rather remarkable change that is taking place in Europe, or we won't.

Senator KASTEN. Thank you, Mr. Chairman.

Senator HOLLINGS. Senator Gramm.

LITHUANIAN ISSUE

Senator **Gramm**. Thank you, Mr. Chairman. Mr. Secretary, let me first say that I think there are a lot of people in the Senate who are concerned about what is happening in Lithuania. I think we want to be supportive. I think we also know that it is a delicate kind of decision, and so consider me as supportive. If you decide you need to get tougher, I would support that, but I don't want to push you into tough action if you don't think it is good public policy at this delicate time.

Secretary **Baker**. Thank you, Senator.

ABILITY TO OPEN UP TRADE

Senator **Gramm**. Let me say that I have confidence in your ability to chart a course of action in our developmental policy in Eastern Europe. But, as I look at our effort to share what we have, which is not to share the cake we have baked here, but to share the recipe we have used to bake it, I am very discouraged about our ability to promote free enterprise and capitalism around the world. I think it is very important that we bet the future of Eastern Europe not on United States aid or anybody else's aid, but on our ability to open up trade.

I would just like to plant the idea with you that we look at some daring moves in that direction, such as considering a potential free trade agreement with Poland. I realize that the usual objections in this country to free trade come from the special interest groups that lose, even though the general public in both countries gains. We have so little trade with Poland that if we doubled our trade, we would be trading less with them than we are trading with Costa Rica.

I think there is a lot of support in Congress to help Poland, and I think we could set a principle in place that could later be used as a model for other Eastern European countries and that would include some fairly simple requirements, such as convertible currency; free movement of labor and capital; recognition of private property.

Secretary **Baker**. Open investment.

Senator **Gramm**. Open investment, and I think that approach is one which we should consider. We have an advantage in Eastern Europe in that they have had a dramatic change in their political structure, and they have a willingness to look at openness that we can't find in Western Europe or can't find in our own country. I want to urge you to try to seize that opportunity.

BUDGET WAIVER FOR SECTION 614

The final point I would like to make is that I am going to support the budget waiver for two reasons: No. 1, the objective of the Budget Act point of order to prevent the expenditure of funds that go beyond the budget, not to enforce the jurisdiction of a committee that I am not on against a committee on which I sit.

Second, I have $7.5 million in that fenced money for the cleanup of the Rio Grande River——

Secretary **Baker**. Yes; yes.

Senator **Gramm** [continuing]. Which may not be important to you.

Secretary **Baker**. Oh.

Senator **Hollings**. Oh, yes. [Laughter.]

Senator **Gramm**. Which may not be important to the great mass of mankind, but to my constituents who live on the Rio Grande River——

Senator **Bumpers**. I have hardly thought of anything else. [Laughter.]

Senator **Gramm** [continuing]. It is of great moment and importance. So I wanted to recommend to you the continued support for that program.

Senator **Rudman**. Third, he decided if I could vote the waiver of the Budget Act, he could.

Secretary **Baker**. Thank you for your interest and support.

Senator **Gramm**. In any case, I hope we can get that, and I think it is vitally important.

Secretary **Baker**. Thank you.

Senator **Hollings**. Very good.

Senator Bumpers.

LITHUANIAN ISSUE

Senator **Bumpers**. Thank you, Mr. Chairman.

Mr. Secretary, any time you have Phil Gramm and Dale Bumpers on the same side of an issue like Lithuania, you know you must be doing something right. I applaud both you and the President for the way you have handled that situation. I must say that yesterday, at noon, I was under the impression the President had already stated that we would impose some sanctions and said that in a speech. I apologize, because I found out later that he had taken a much more restrained position.

I am one who believes that one of the great advantages of being a great power is restraint, and in this particular case, I know that the pressures are fairly intense from those especially who simply cannot adapt to the new dynamics in the world and change a mindset that has been in existence for a very long time.

But I don't see anything to be gained from it except a soured relation with the Soviet Union. It doesn't help Lithuania, and it certainly throws us off track in a new relationship from which this country stands to gain immeasurably. So I say at this stage that I reserve the right, just as you pointed out, to change my mind depending on future circumstances there.

But while I am just making a statement, I want to also say that we have a Puerto Rico statehood bill coming up here, and when that comes up to the floor, I intend to offer a super majority requirement for them to become a state. I do not want Puerto Rico coming into the union on a 50.1-percent vote. The reason I don't is because down the line, somebody will allege that it was fraudulent; that the United States participated in the fraud, and they want out. And we may very well find ourselves, as you can say that there is no correlary between a situation like that and Lithuania, but there is.

As a matter of fact, you know, Caucasians are going to be in the minority in the year 2050 in this country. We will have our own ethnic problems. We already have some. and we will have more.

But I want to say again that I applaud the way you are handling it, and I hope that you will not take, as an administration, I hope you will not take a passive attitude about this amendment.

I intend to oppose it. I think there are a lot of people on the other side of the aisle who share Senator Gramm's feelings, that would like a little signal from the administration on that. I don't like to oppose my chairman, Senator Byrd, on issues like that, but this is one place where we will part company, because I think that amendment, it looks innocuous enough, and I understand it, but there is a certain signal that will be sent if that amendment is adopted.

Secretary BAKER. Senator, we opposed it in the committee, as you know.

Senator BUMPERS. I know you did.

Secretary BAKER. We don't plan to change our position on it.

Senator BUMPERS. I would simply ask, since it is permissive, can you live with it?

Secretary BAKER. If we have to live with it, we can live with it, because it gives us flexibility, but we don't want to see it there for the reasons that I have outlined. May I just say thank you very much on what you have said about Lithuania. I want to make sure that everybody understands that we, too, are talking at this stage.

What the President actually said was that he will have an appropriate response. At this stage, we believe this is the appropriate response, but thank you.

Senator BUMPERS. I couldn't agree more, and as I say, I applaud the President for his restraint and what I think is just commonsense in the way he is handling things.

Secretary BAKER. Thank you.

ARMS CONTROL NEGOTIATIONS

Senator BUMPERS. I don't see anything but a lose-lose situation from our standpoint at this stage.

Having said that, Mr. Secretary, let me point out one other thing on arms control. I am on the Arms Control Observer Group, and that has been a special interest of mine for a long time. We were in Geneva about 1 month ago visiting with Rick Burt and our negotiators, and let me make this statement and then just ask you to comment on it.

When we started negotiating the INF Treaty with the Soviet Union, everybody applauded that. As a matter of fact, we all enthusiastically voted to advise and consent the ratification of that treaty.

But the truth of the matter is, from the time we started negotiating until President Reagan and now President Gorbachev signed the treaty at the White House in December 1987, from the time we started negotiating the treaty until that time, we had added more strategic warheads than we reduced under the INF Treaty.

Under the tentative agreement, and of course, it is said that the Soviet Union has backtracked on how you are going to count sea-launched missiles, and that is another issue. They never were in this treaty to begin with, but my point is, from the time we started negotiating the START talks, President Reagan rather grandiously said, "We are going to cut out warheads one-half; we are not going to deal with launchers and missiles any more. We are going to talk about warheads, and we are going to reduce ours and the Soviet Union's warhead stockpile by 50 percent."

If we were to sign that treaty today under the tentative agreements, the United States would have more warheads left in its arsenal after that treaty was implemented than we had when we started negotiating the START treaty. This all sounds terribly perverse to me, and counterproductive, and I don't know what the hell we are doing.

Secretary **Baker**. The pace of arms control negotiations was not keeping up, Senator, for quite some time.

I do think that the situation has changed, at least the political situation has changed over the course of the past year. Some would argue that in conventional arms control, the arms control negotiations aren't keeping up with political developments.

We have made certain proposals to the Soviets that are still under discussion and consideration with them. I don't want to go into a lot of detail here, but you are probably aware of the question of MIRVing that would correct the situation you are talking about; at least smooth it substantially in that direction.

But having said that, having acknowledged what you say is true, that is not, and I don't think you suggest it to be, an argument for not moving forward as quickly as we can——

Senator **Bumpers**. No; no, it was not.

Secretary **Baker** [continuing]. To conclude this agreement. We ought to conclude this agreement, and yes, we do still have some problems with respect to sea-launched cruise missiles and for that matter, with respect to air-launched cruise missiles that we have to thrash out if there is going to be any change on major substantive issues by the time President Bush visits with President Gorbachev on May 30.

Senator **Bumpers**. Mr. Secretary, I think you, and let me tell you, this has not originated with you, but it originated with me because I heard Brent Scowcroft say it in 1983, that the most ultimate goal and stabilizing effect that the United States and Soviet Union could have strategically would be for both sides to have 400 or 500 single warhead missiles, either mobile or immobile. Maybe they could be mobile if they could be rail. I think that was a very poignant thing that Brent Scowcroft said.

I think that ought to be our ultimate goal. If the administration, and I understood in Geneva that the administration does not want to go forward with START II until START I is implemented.

My feeling is: I am willing to wait if the administration clings to that policy with which I disagree. I think we ought to immediately go into START II, regardless of how START I turns out, but if that is going to continue to be the administration policy, then I am willing to wait awhile on START I. I mean, we waited this long.

I would like to see something really—what shall I say—stabilizing come out of that, and one of the things that we could do by possibly waiting a couple of months longer than we would otherwise wait would be to begin dismantling some of these merved destabilizing missiles.

For example, Ahkromayev has suggested, and I made this suggestion 1 year ago in Geneva, and, frankly, got sort of hooted at. Since that time, Ahkromayev said we ought to lay it on the table, and it is simply this: "We will not go forward with the MX rail mobile if you will dismantle your SS–24's."

The idea is the SS–24's are brand new, they are the latest technology, and they are not going to give up however many SS–24's they may have deployed in exchange for a promise from us to not to go forward with an MX rail mobile.

But if I said it, obviously, Gorbachev might say it, too. I think it is worth negotiating. We might even get rid of some additional SS–18's in exchange for three or four submarines.

Secretary **Baker**. Senator Bumpers, I would love to discuss some of this in more detail with you after this hearing in terms of what they are doing. We can have a little private executive session if you would like.

Senator **Bumpers**. What do you say to that, Mr. Chairman?

Senator **Hollings**. That would be fine.

Secretary **Baker**. I don't want to do it right here, right now.

VIEWS OF GENERAL CHAIN

Senator **Bumpers**. Let me ask you a final question. I think this is the final question on General Chain. The other day, General Chain said if he didn't get all the B–2's, he would oppose the START Treaty. And I don't know General Chain, but I must say I don't like that comment. He works for the Commander-in-Chief.

If the Commander-in-Chief puts his name on the START Treaty, I would expect General Chain to belly right up there and be a team player. It is not his prerogative to decide whether we ought to approve the START Treaty here in the Senate or not.

Let me say one other thing. He makes the point that I think is fairly legitimate, and if he had made this point only and not gone a little further into what I consider the political arena, I would not have been as irritated about it. But if we insist on keeping the SIOP we have right now, and this is unclassified, I have seen figures in the press about how many targets we have to hit in the Soviet Union, if we expect under our SIOP to knock out every recruiting station in the Soviet Union, then we probably need 12,000 warheads. It seems to me that the National Security Council and the SIOP is driving our modernization of strategic weapons, and I don't think that is necessarily a good idea. But if I were General Chain and I had the responsibility as SAC Commander to knock out all these targets, I would say, "Yes; you have got to give me 132 B–2's."

I don't even request an answer to that, Mr. Secretary. Maybe we can pursue that a little further in the executive session, too.

Secretary **Baker**. I would be glad to do that, Senator. I will just make the general observation that the political situation has changed and is changing. You don't just see it impacting strategic weapons; you see it in conventional, as well, and you see the countries of Eastern Europe and Warsaw Pact countries in Eastern

Europe creating democracies, and we are getting all sorts of doctrines installed.

VISITS TO CHINA

Senator BUMPERS. Have we derived any benefits from our secret visits to China?

Secretary BAKER. I think some, Senator Bumpers, yes. Frankly, not as much as we would hope.

Senator BUMPERS. You are disappointed, aren't you?

Secretary BAKER. I think it is not telling tales out of school to say that the President is a little disappointed in the response to date by the Chinese leadership, and we would hope that we could see further.

Senator BUMPERS. They don't enjoy MFN treatment, do they, China?

Secretary BAKER. They do, now.

Senator BUMPERS. Do they?

Secretary BAKER. Yes, sir.

Senator BUMPERS. Has there been any thought given to changing that?

Secretary BAKER. That is a matter that will be before you, I think, in June.

Senator BUMPERS. Thank you, Mr. Chairman.

ISRAELI TRANSMITTER

Senator HOLLINGS. Mr. Secretary, two quick items with respect to the Israel relay station. The Jerusalem Post earlier this year said Ivan Selin asked the Israel Government about abandoning the station in order to save money. You know, the first thing that Vaclav Havel wanted to do was meet the broadcasters of Radio Free Europe and the Voice of America. He said he knew their voices and he wanted to meet them individually, because they meant so much in his commitment.

Similarly, Lech Walesa, when asked about Radio Free Europe, said, "What is a world without a Sun?" Now we are moving into Asia Minor with that Israeli relay station for RFE/RL and the Voice of America and then we hear from somebody else that we might not.

Do you support it, or do you understand what I am asking?

Secretary BAKER. I understand what you are asking. Let me say that we still support the project. At the same time, to say one more time, we are in a period of very dynamic change. The political situation is changing. The situation certainly in Eastern Europe is changing, to some extent, it is changing in the central Soviet Union. We are in the process of taking a fresh look now, Senator Hollings, at all of our broadcasting activities. When that review is completed, we might be in a better position to determine what changes, if any, ought to be made in our transmitter network, including what changes, if any, we might suggest with respect to this Israeli transmitter. But right now, we support the project.

Senator HOLLINGS. Well, the change has not been more dimunition, but the fact of the matter is like in Hungary, we didn't have any newspaper; they had it. So we had to get all the information through the Voice of America. In other words, we were stepping up, as a result of all this change, we were stepping up our activity. I am ready to give Steve Forbes more money to accelerate the flow of information and free ideas and so forth. Because it has worked.

Is it your idea now with the change that since we have won, we can cut it all back?

Secretary **Baker**. I don't want to prejudge the review, but I do think that we ought to take a look at what was the basis for the origination of the project, which was to transmit a message of freedom into Eastern Europe; at least that was a part of it. Eastern Europe will be free.

Senator **Hollings**. Well, no. It is to reach into Georgia and the other sections of the Soviet Union.

Secretary **Baker**. Yes, sir; indeed, and in the central Soviet Union, too.

Senator **Hollings**. Yes.

Secretary **Baker**. That gets into the whole issue of the degree to which we want to see stability or instability in the Soviet Union and the degree to which we ought to encourage stability versus instability. So all I am saying is, we are reviewing the whole question of our transmitter activities, Senator, and it is a little early for me to try to respond.

PROPERTY IN KUWAIT

Senator **Hollings**. In my years of traveling, I have noted the extravagant and really very costly commitments to property acquisition and development in places overseas for the Department of State. Do we have somebody over there handling the property now? We were looking. I know I talked to Under Secretary Selin about trying to find a really good expert who knew languages, and had constructed overseas and everything else of that kind.

The reason I ask, is I am looking at Kuwait. We lost 42 Americans and flew the American flag on Kuwaiti vessels to maintain the free flow of oil in the Persian Gulf. Now they are going to charge us $2.5 million an acre for property there that is sand. Are we getting any oil underneath that thing? [Laughter.]

Secretary **Baker**. Property isn't cheap in Kuwait.

Senator **Rudman**. It isn't even owned by the Kuwaitis. It is owned by the family of the Emir of Bahrain. He set the price.

Senator **Hollings**. Oh, the family; I can get together with the family. [Laughter.]

Two and one-half million, I don't think we can justify that. Whatever we are doing now; just keep on doing it, don't worry about it?

Secretary **Baker**. You ought to take it on a contingency for us, Mr. Chairman, and keep one-third of what you save.

Senator **Hollings**. Keep one of those mine sweepers that we sent from Charleston out there. It doesn't cost much. Let them run up and down the coast and put a good radio on board to keep in touch with Foggy Bottom. [Laughter.]

That is all we need. You can't justify spending that. It is some kind of $32 million.

Secretary **Baker**. It is $32.5 million, and that is a lot of money. Property is expensive in Kuwait, and I am told, Senator, that this is the least expensive of all the sites that were available that would meet the minimum requirements for an Embassy. That is the best and only answer I can give you, because I am not familiar with the particular circumstances.

Senator **Hollings**. Who handles property for the Department of State?

Secretary **Baker**. It comes under the Under Secretary for Management, Mr. Selin, and I will be glad to make him available or anybody working for him or the particular people involved with this particular acquisition.

Senator **Lautenberg**. What do you think an acre of land in Washington is worth?

Senator **Hollings**. I don't know. Go ahead.

Senator **Rudman**. No; thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Hollings**. Mr. Secretary, we will leave the record open for further questions. We will appreciate having your answers as soon as possible.

Do you want to go into closed session?

Senator **Bumpers**. I think for 10 or 15 minutes.

Senator **Hollings**. You tell me, Mr. Secretary.

Secretary **Baker**. I would like to get out of here by noon, anyway.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

REPEAL OF SECTION 614

SENATOR HOLLINGS: The 1990 funding of the Department as well as the USIA is presently constrained to the 1989 level by Section 614 of the appropriations bill. As you know, Senator Rudman and I will have an amendment to repeal Section 614.

Mr. Secretary, you and I have talked about this, but for the record, does the Administration support repeal of Section 614?

SECRETARY BAKER: The Department of State does support the repeal of Section 614.

SENATOR HOLLINGS: More importantly, my amendment will be subject to a Budget Act Point of Order. Does the Administration support waiving the budget act in order to repeal Section 614?

SECRETARY BAKER: The Department of State does support waiving the Budget Act in order to repeal Section 614.

INTERNATIONAL AFFAIRS SPENDING

SENATOR HOLLINGS: The President's 1991 Budget recommends a total of $20.3 billion for budget category 150, International Affairs. More importantly, 150 outlays are projected at $17.8 billion. Of this total, the International Affairs agencies in this bill are requesting $5.3 billion, and the associated outlays are $5.2 billion. The House Budget Resolution for 1991 reduces foreign affairs spending by $200 million, and the resolution introduced by Senator Sasser maintains baseline funding which would be a $1.2 billion reduction to the requested outlays.

Mr. Secretary, last year, the Administration agreed in the Budget Summit, to a $367 million reduction in international affairs outlays. We never could get a plan from your office on how that was to be applied, except for Mr. Selin saying to take it out of the Israel Relay Station. As you know, the bulk of 150 spending occurs between this subcommittee and the Foreign Operations Subcommittee, and I was able to protect this bill.

1. Mr. Secretary, since your budget was drafted we have had the wonderful events in Eastern Europe, Panama, and Nicaragua. These changes should increase your budget. Accordingly, are you and the Department better prepared to defend the International Affairs category in the budget negotiations than you were last year?
2. In the event the Administration is forced to compromise on 150, can we expect any guidance from the Department as to how the reductions are to be applied to the International Affairs account in this bill?

SECRETARY BAKER: As you point out, the dramatic changes in the world make our international affairs request more important than ever. Let me emphasize again -- we need the full funding of the President's request for our foreign aid programs, our diplomatic operations, and our exchange and broadcasting programs -- to consolidate democracy and the positive changes we have seen. And we need the additional, emergency supplemental of $870 million dollars for Panama, Nicaragua, and refugee funding.

The House has passed its Budget Resolution, and the Senate Budget Committee has reported out its version. The Administration is following the process closely. An important priority will be to assure that the President's foreign affairs request receives adequate funding. If a summit or negotiations between the Administration and the Congress do take place on the budget, we hope to work closely with you and this committee.

AUTHORIZATION FOR APPROPRIATIONS

SENATOR HOLLINGS: The Department is now operating at the 1989 level because the Committee on Foreign Relations insisted that the 1990 Appropriations first be authorized.. We now have an Authorization Act and are trying to repeal Section 614.

As you know, the Authorization Act covers both fiscal years 1990 and 1991. However, there are several of the Department's 1991 requests for which there is not sufficient authorization, such as, the $270 million for Moscow, as well as $90 million for other buildings; $341 million of the request for international organizations; $132 million for peacekeeping; on down to $1.5 million of the request for the Inspector General.

Mr. Secretary, we lost the fight last year because we didn't get any help from the Department. Do you think you can get us an authorization to work with?

SECRETARY BAKER: The Department of State has submitted a request for supplemental authorization for 1991 appropriations which will provide sufficient authorization for each account in the 1991 Appropriations request. The House has held hearings on the Authorization request and has prepared a draft bill which provides sufficient authorization for our request. We are optimistic that the House and Senate will pass the needed supplemental authorization.

MOSCOW OFFICE BUILDING

SENATOR HOLLINGS: In October 1988 President Reagan announced his decision to demolish the bugged Moscow Embassy building and rebuild a new cantilevered building on the foundation of the former building. The Bush Administration decided it had to restudy the situation, but in December, 1989 announced that it had come to the same conclusion as its predecessors. On February 21, 1990 the Department submitted a request to use $2,000,000 of the funds remaining in the Moscow account to undertake partial design work for dismantling and rebuilding the new office building on its current foundations.

Who else besides this subcommittee has approved the reprogramming?

SECRETARY BAKER: No one else has approved our reprogramming request of February 21. It was disapproved by Chairmen Neal Smith and Dante Fascell; no response was received from Chairman Pell. The Department is currently considering next steps.

SENATOR HOLLINGS: Mr. Secretary, does your proposal have the full support of the intelligence agencies?

SECRETARY BAKER: Yes, our decision to tear down the existing new building and reconstruct it in place has the full support of the intelligence community.

SENATOR HOLLINGS: On March 29, 1990 the President submitted a budget amendment in the amount of $270,000,000 for carrying out this proposal. What are the details of the $270,000,000; how much to demolish the present structure; how much to actually build the new structure; how much is for construction security; and how much for furniture and furnishings?

SECRETARY BAKER: Following is a cost breakdown of the $270 million contained in the Administration's budget amendment:

Capital Project Summary/Cost Estimates
(dollars in thousands)

Moscow: CHANCERY OFFICE BUILDING Funds Requested: $270,000
Funding Request:

	FY-91 Request
Design	$3,000
Demolition	5,000
CONSTRUCTION	
Basic building	75,100
Security features	46,800
Outfitting items	15,200
SECURITY	
Technical security	38,500
Site/transit security	59,800
Secure warehouses	9,000
Project Supervision/arbitr.	17,600
TOTAL PROJECT COSTS	$270,000

SENATOR HOLLINGS: How does the amount of space in the new proposal compare to what we would have had with just the NOB? Why do we need all the extra space?

SECRETARY BAKER: The gross square footage of the NOB as built is 173,500 sq. ft.; the planned gross for the rebuilt structure is an 222,400 sq. ft. But the net square footage of the two buildings will be roughly comparable, since the new structure will contain more gross space given over to security features than the present NOB contains. However, we also plan to retain the present old embassy building on Tchaikovskova street for unclassified, public service functions — functions that would have been performed in the present new building under original plans. Meantime, of course, the demands for such functions have increased in response to dramatically changed circumstances, well beyond what was contemplated when the original building was designed twenty years ago.

SENATOR HOLLINGS: The House Foreign Affairs Committee has approved $300,000,000 for this project. Why did they increase the amount by $30,000,000?

SECRETARY BAKER: In a March 28 hearing of the Subcommittee for International Operations, Chairman Dymally said: "I plan to offer an amendment to increase the levels from $270 million to $300 million to give the State Department some flexibility for inflation, for currency exchange, and other unforeseen circumstances, and the whole issue will be debated."

SENATOR HOLLINGS: Would I be correct in saying that the House leadership wants to retain the present building for unclassified activities and to build another building for classified activities? What do you think of that?

SECRETARY BAKER: We cannot speak for the House leadership, but some House members have said they want to save the existing new building for use as specified in the question.

Keeping the new building for some unclassified use seems sensible at first glance. But physical security standards make its location in the middle of the new compound unsuitable for public service activities. For security reasons we do not want to allow the general public access to the compound. Other unclassified, non-public service needs would fill only a tiny part of it. Also, the new building's layout, with a central utilities core, makes its reconfiguration for housing very inefficient. We recently examined prospects for converting the present NOB into family housing units (1-4 bedrooms). Such reconfiguration would result in about forty apartments at a cost of $30-35 million, probably double what it would cost to build desirable modern housing units on a new site.

Alternative uses for the new building could not in any case be made available until after completion of a new chancery elsewhere: an earlier agreement with the USSR calls for simultaneous occupancy of new chancery buildings.

The overriding objection to not rebuilding on the present site is that it essentially, puts off a solution into the distant future, because it will add extra time and expense for acquiring a new site (3-5 years), putting in new foundations, bringing in utilities and allowing for possible Soviet mischief-making.

SENATOR HOLLINGS: How much now remains available in the Moscow account and how much of your proposal will it cover?

SECRETARY BAKER: As of 1 May 1990, $19.7 million remains in the original appropriation for the Moscow New Embassy complex. We are spending those funds at the rate of about $500,000 per month for maintenance and operations in the new building. Thus, depending on when go-ahead is received for starting design work, that appropriation may suffice at least for design costs. Any remaining balance will of course be applied to the rest of the new project.

SENATOR HOLLINGS: When will you need the $270,000,000 in order to make obligations?

SECRETARY BAKER: That depends upon when we receive approval to begin design work and how much is left in the original appropriation at that point. We estimate the design development will take about 13 months. At that point, we need the amount necessary to fully fund the construction contract in order to initiate that process. Thus, if we received approval to begin design in May, 1990, we would need a major portion of the 1991 request, under anti-deficiency law, when we begin the construction contract procurement in the summer of 1991. If, as has been often the case in recent years, new money does not become available until after the end of the fiscal year, the project could be delayed 6-8 months.

SENATOR HOLLINGS: The Department has indicated that each month of delay costs $1,300,000. Would you agree that your determination to review the Reagan Administration's decision cost us $18,200,000 at $1.3 million a month for the 14 months you studied it again?

SECRETARY BAKER: Restudy of the Reagan Administration's decision was instigated in the first instance by the Congress, which declined to approve reprogramming money for design at the end of the Reagan Administration's term of office, and again in March of this year. As previously noted, the continued delay entails two major monthly costs: $500,000 for operations and maintenance and over $700,000 increase in rebuilding cost based upon a cost deflator for FY90-FY-91 of 3.2%.

SENATOR HOLLINGS: How far along are we in the negotiations for dismantling and replacing the NOB as well acquiring additional property adjacent to what we have in Moscow? What are the Russians asking for in return?

SECRETARY BAKER: Ambassador Nicolas Salgo has been conducting informal negotiations with Ambassador A. A. Obukhov of the Soviet Union since March of 1989. During the course of the nine rounds held so far, each side put forward property-related items that they would like to accomplish in the capital of the other side. Specifically the United States asked for the land and buildings which separate our current chancery from the new embassy complex as well as ownership of the buildings which we currently use for our embassy and ambassador's residence and 90-year leases on the land around our embassy, ambassador's residence and warehouse. The Soviets have requested primarily additional housing.

We have also proposed to the Soviets an agreement covering the conditions of construction of a new building to replace the unfinished new office building. The Soviets have been asked to provide, outside the scope of the general agreement, temporary use of nearby land to enable us to carry out the reconstruction.

Much progress has been made in the negotiations. However, the remaining unresolved issues are among the most difficult. The absence of a firm U.S. Government decision, encompassing both the executive and legislative branches, removes a critical incentive for the Soviets to come to closure in the property talks.

Even if a general agreement on property issues is concluded between the two sides in the near future, we cannot expect to be able to occupy fully all the properties we acquire under the terms of such an agreement immediately. Relocation would be required in some instances. In addition the properties the Soviets wish to purchase in the United States are not currently on the market and it will take time for us to acquire them in order to exchange them for properties we receive. Our current estimate is that it would take about 3-5 years to deliver all the properties promised under a general agreement.

SENATOR HOLLINGS: If we keep the current embassy building, does that imply that the Soviets will retain their current embassy on 16th Street?

SECRETARY BAKER: There is no formal linkage between the two; the USSR has long owned the 16th Street property outright. They would have retained this building even had we occupied the NOB and moved out of the EOB in 1985.

SENATOR HOLLINGS: Please supply for the record a summary of all the current legislation specifically affecting the Moscow Embassy and the new Russian Embassy at Mt. Alto.

SECRETARY BAKER: Our compilation follows; it may not be complete, particularly for those past resolutions not having the force of law:

Moscow Embassy Buildings
Legislative Actions

Most Congressional actions on this and related topics are contained in the FY 1988-89 Foreign Relations Authorization Act of December 22, 1987 (PL 100-204).

A. Paragraph (a) under Department of State "Acquisition, Operation and Maintenance of Buildings Abroad" of Public Law 99-88 (Supplemental Appropriations Act, Fiscal Year 1985) provides that the Secretary of State shall not permit the Soviets to occupy their new embassy facilities in Washington if they fail to provide prompt and full reimbursement for damages to our new embassy in Moscow. The amount is to be determined by mutual agreement or by international arbitration. This section contains a waiver provision based on national security interests and a certification by the Secretary that a "substantial number" of the claims have been settled and the rest are proceeding. If the claims are settled for less than the full amount, the Secretary must make a detailed report to the Congress.

B. Section 154 of the FY 1986-87 Foreign Relations Authorization Act of August 16, 1985 (PL 99-93) contains the same requirements.

C. Section 304 of the Department's 1988 Appropriations Act of December 22, 1987 (PL 100-202) provides that the Secretary of State shall not permit the Soviets to occupy Mt. Alto or any other new D.C. facility until our new chancery in Moscow is ready for occupancy.

- - THE FOLLOWING PROVISIONS ARE CONTAINED IN THE 1988-89 ACT:

D. Section 151 would require the President to abrogate the 1969 exchange of sites agreement with the USSR and remove the Soviets from their new Mt. Alto embassy location by April 10, 1991. This section contains a (nondelegable) waiver provision keyed to a determination by the President that: (a) the agreements are "vital to national security;" (b) steps have been or will be taken to secure the U.S. chancery in Moscow, and; (c) steps have been or will be taken to eliminate the damage to national security from electronic surveillance from Mt. Alto. This provision was suspended by the FY 1988 Appropriations Act for FY 1988 and 89: the suspension expired. and accordingly the "clock is now ticking." In a statement released at the bill's signing, President Reagan cited this provision, inter alia, as one that could be construed so as to interfere with the discharge of the President's special prerogatives under the constitution for the conduct of foreign relations. Reagan said he would seek repeal of the provision(s).

E. Section 152 is a sense of the Congress provision that the arbitration process under way with the USSR for damages for related to delays in the new building should include a claim for full reimbursement of the costs of dealing with the bugging.

F. Section 157 prohibits, effective October 1, 1991, the employment of nationals of communist countries in any area of U.S. facilities where classified material is maintained in those countries. A waiver is permitted if funds are not appropriated by the Congress for providing cleared American replacements or on grounds of national security.

G. Section 160 requires the Secretary to certify, after consultation with the Director of Central Intelligence, that adequate steps have been taken to ensure the security of new construction for classified facilities overseas before undertaking any new construction.

H. Section 161 gives the Secretary of Defense and the Director of the FBI a veto on counterintelligence grounds over the proposed acquisition of real estate in the U.S. by communist and certain other countries.

SENATOR HOLLINGS: Several years ago the Soviets removed all their nationals from the Embassy. While we certainly don't want them back in the Embassy, sorting mail and other things, have any of the Russians returned to embassy outside jobs; i.e., motor pool, etc.? If so, what has been the reciprocal arrangements with the Soviets in the USA?

SECRETARY BAKER: No Russian nationals have been returned to jobs in the Embassy. Under our Core Chancery policy, none will ever be permitted to enter the secure areas of the EOB or any reconstructed building. At the moment, however, we are considering the use of Russian or joint venture cooperatives to assist in routine administrative work outside the physical confines of the embassy for tasks such as arranging in-country travel and other ticketing, delivering invitations, etc. Such use is being studied because of the difficulty of recruiting and housing contract American staff with requisite language capabilities.

There is no reciprocal effect on Soviet operations in the U.S. The Soviets have long been free to employ such U.S. nationals and firms as they see fit, although in certain instances their functions may be restricted by the Office of Foreign Missions based upon other considerations of reciprocity.

EASTERN EUROPE AND THE USSR

SENATOR HOLLINGS: Mr. Secretary, we appreciate that your budget was developed while the events in Eastern Europe were still unfolding. Outside of 2 additional positions for Warsaw, no other increases are proposed for Eastern European and Soviet posts. With several months of the new order behind us, are you ready to propose a reallocation of staff in order to effectively deal with the new Governments in Eastern Europe especially?

SECRETARY BAKER: The Department had established a task force to review staffing requirements of posts in Eastern Europe and the Soviet Union. The task force identified well over 100 American and foreign national positions which are necessary to satisfy new program requirements in Eastern Europe and the USSR. To respond promptly to the most urgent needs, the Bureau of European and Canadian Affairs is reprogramming 38 American and 29 foreign national positions from posts in the West to the East. We are working to identify candidates to fill those new positions. Since almost all of the American positions will require nearly one year of language training, we have been actively seeking employees who already have the requisite language skills. We hope to be able to staff some of the positions by the end of this summer. To accomplish these position transfers, we have had to reprogram very scarce financial resources, which has caused inadequate funding levels for many other programs.

SENATOR HOLLINGS: What workload changes have been experienced since the opening of the Eastern European borders, such as visas and other consular workload; visits by business delegations, or others.

SECRETARY BAKER: We have seen considerable workload increases at our posts in Eastern Europe and the Soviet Union. The Task Force has identified a number of consular officer positions that need to be added to our posts in the East, to deal not only with increased requests for visas, but also services for the growing number of American citizens visiting and working there. We have seen a similar increase in numbers of official and unofficial visitors requiring embassy and consulate services. Not only must additional administrative personnel be added to the posts to deal with the large increase in official travelers, but the Foreign Commercial Service of the Department of Commerce plans additional staffing at a number of posts in order to help provide service to the increased numbers of American businessmen who are visiting Eastern Europe and the Soviet Union.

SENATOR HOLLINGS: What have the posts requested to cope with the changes in Eastern Europe, such as additional staff, funds, facilities or other resources, such as Washington support? Has the Department approved any of these requests and where? To what extent are these resource requirements reflected in your budget submission?

SECRETARY BAKER: In response to queries from the Task Force, posts identified needed increases in staffing to address the increased workload resulting from changes in Eastern Europe. We expect to be able to provide a significant number of the positions requested, and the process of reprogramming from posts in the West to those in the East is already in progress. Every embassy in Eastern Europe will receive additional positions. As staffing and official travel to Eastern Europe increase, our posts are facing shortages of office space, housing, and motor pool vehicles. The posts are attempting to anticipate these additional resource needs and are working with appropriate offices of the State Department to satisfy their increased requirements. To accomplish position transfers and provide other support and services for Eastern European posts, we have had to reprogram very scarce financial resources, and this has caused inadequate funding levels for our many other programs.

SENATOR HOLLINGS: Given both budgetary constraints and the lengthy process of hiring/training foreign service personnel, where will additional staff resources be obtained (near-term and long-term)? Are staff within the European or other bureaus targeting for shifts? Have any staff already been moved?

SECRETARY BAKER: The Department had established a task force to review staffing requirements of posts in Eastern Europe and the Soviet Union. The task force identified well over 100 American and foreign national positions which, if unlimited resources were available, would be useful additions to our posts in the East. To promptly respond to the most urgent needs, the Bureau of European and Canadian Affairs is reprogramming 38 American and 29 foreign national positions from posts in the West to the East. We are working to identify candidates to fill those new positions. Since almost all of the American positions will require nearly one year of language training, we have been actively seeking employees who already have the requisite language skills. We hope to be able to staff some of the positions by the end of this summer.

SENATOR HOLLINGS: Section 124 of the Foreign Relations Authorization Act expresses the sense of Congress that the United States consulate in Bratislava, Czechoslovakia should be reopened. How are we coming on that?

SECRETARY BAKER: We plan to reopen our consulate in Bratislava in summer, 1990; a reprogramming notification will be sent to Congress very shortly. The principal officer has been selected. We are in the process of developing a work schedule for making the U.S. Government-owned consulate building ready for reoccupancy.

SENATOR HOLLINGS: Before Chernobyl we were going to open a consulate in Kiev. How does that stand?

SECRETARY BAKER: In October 1986, the Department of State's Office of Medical Services conducted radiological measurements in Kiev to assess the possible health threat there in light of the Chernobyl accident. The study concluded that there would be no reason to exclude any individual (including pregnant women or infants) from posting to Kiev who would otherwise be medically clearable for such an assignment.

We soon hope to conclude understanding with the Soviets on conditions for implementing an exchange of consulates in Kiev and New York. Any agreement will have to guarantee complete reciprocity of rights for the United States, though the missions may not be mirror images of one another. We understand from the Soviets, for example, that they hope to begin large-scale visa operations at an early date in New York. This is logical given that it is a center for the U.S. travel industry. We issue most visas after a personal interview, however, and therefore do not expect to conduct visa operations until a later stage when proper public access controls have been installed. Our initial focus will be on political and economic reporting and cultural-informational activities. We will insist that equal staff ceilings be established for the two posts, but for the sake of efficiency we may consolidate some of our administrative support functions at Embassy Moscow. Thus, we may wish to use some of our Kiev ceiling slots in Moscow, while reserving the right to transfer them to Kiev at our convenience. We have consulted with interested U.S. agencies which have no objection to Soviet use of their property in New York. We will withhold final approval for the Soviets to occupy their New York premises until we are able to occupy comparable premises in Kiev.

SENATOR HOLLINGS: Ambassador Matlock recently said that we needed six unclassified posts spread over the Soviet Union. Is that under active discussion and what would the Soviets expect in return?

SECRETARY BAKER: Based upon a recognition that the centralized economy does not function efficiently, the Soviet Union is transferring power from Moscow to republic and local levels. A parallel process is underway to transfer greater political power to local elected bodies. Soon, Embassy Moscow will not adequately be able to cover events in the USSR from one central location and one consulate in Leningrad. To take advantage of unprecedented opportunities to acquaint Soviet citizens with American views and values, promote trade and report on developments, a number of small consulates will be needed. It is worth noting that the area between Moscow and the Pacific coast -- where there are no U.S. consulates -- is larger than the entire continental United States. As a first step, the Department is proceeding with plans to open a consulate in Kiev as soon as possible. Key regions which might be served by future consulates include the Caucasus, Central Asia, the Pacific Coast and Siberia. Some consulates may be directed primarily to support special functions like arms control verification. The Department believes these consulates should be small. USIA and the Department of Commerce might likely have representatives at some posts; in the case of missions which support arms control inspectors, the participation of the On Site Inspection Agency would be anticipated.

In return, the Soviets would expect the right reciprocally to open additional consulates in the United States. We have not yet engaged in discussions with Moscow on this issue and cannot say where the USSR might want to locate new posts.

PROPERTY IN KUWAIT

SENATOR HOLLINGS: Mr. Secretary, the Department wants to acquire a site for our embassy in Kuwait. The Department is proposing to spend $2,236,231 per acre, or $32,500,000 for 14.36 acres. In fact, if this "deal" cannot be closed by May 24th, the price goes up by $2,500,000.

Mr. Secretary, to many people, one pile of sand in Kuwait looks like another. What makes this particular site so expensive?

SECRETARY BAKER: The price of the Kuwait site is a function of market forces in Kuwait. Property in the Jabriya area (location of the site) is currently selling at the equivalent of $500 to $643 per square meter. The site is suitable for development with full availability of utilities. The negotiated purchase price for outright ownership is $553 per square meter. This market value range of prices has been substantiated by two appraisals prepared for the Department in February and March of 1990.

This per square meter price is less than that of all the other acceptable sites reviewed. The owner of the highest-rated backup site, a real estate speculator, was asking a price of $714 per square meter. The number two backup site cost $1218 per square meter - more than double the price per square meter of Jabriya, and provided only a 50 year lease term; the owners refused to sell. The owners of the current compound demanded $2,000,000 per year for less than half the size, with 5 to 10 years paid in advance, for a 25-year lease, with ownership of all USG constructed buildings reverting to them at the end of the 25-year term. They also refused to sell fee simple title.

We urgently need new secure facilities at this high threat post. If we do not make a decision now, we are facing the possibility of not having an acceptable site when our lease expires in 1996, and/or may be forced to a much higher cost site in a market with rapidly escalating real estate values.

SENATOR HOLLINGS: During the Iraq/Iran war we put the American flag on 11 of Kuwait's tankers and the U.S. Navy, at the loss of 42 American lives, protected the free flow of commerce in the Persian Gulf. Might we not expect some reciprocation from the Government of Kuwait in providing us the site we need?

SECRETARY BAKER: The U.S. Navy defended the principle of freedom of navigation and helped ensure the free flow of oil through the Strait of Hormuz because it protected our longstanding interests in the Persian Gulf region. During the Gulf war, Kuwait provided--and continues to provide to this day--essential support and assistance, including fuel. The site we are seeking to acquire is owned by private citizens, not by the Government of Kuwait.

CONSTRUCTION SECURITY

SENATOR HOLLINGS: Construction Security provides the surveillance of construction, transit security, and site security guards to meet the legislated security requirements. The 1991 budget transfers the Construction Security program from the Salaries and Expenses to the Foreign Buildings appropriation. While $45,000,000 is deducted from Salaries and Expenses, nothing is added to the FBO account. Instead the Department proposes to use $65 million in funds previously appropriated for the construction of buildings abroad.

SENATOR HOLLINGS: The Budget proposes to inform us by a reprogramming the projects to be eliminated in order to absorb the construction security account. However, if you have the judgment to transfer the program, you must already know which projects are to be cancelled. May we have a list of those projects?

SECRETARY BAKER: The Department is currently reviewing several options, including use of funds from the Bogota and Tunis chancery building projects to meet the requirements of the Construction Security program in FY 1991. We will consult with the Committee prior to making a final decision on this matter.

SENATOR HOLLINGS: The Department brought an unobligated balance of $842,322,000 in the buildings appropriation into Fiscal Year 1990. You plan to use $65,000,000 for construction security, but by the end of 1991 you expect to obligate the remainder, plus more than $600,000,000 in new appropriations. What accounts for the speed up in obligations? Is it believable?

SECRETARY BAKER: The Department's accounting records indicate that the unobligated balances in the Acquisition and Maintenance of Buildings Abroad Appropriation was $814,928,000 as of September 30, 1989. The delays encountered in the execution of the Diplomatic Security Construction Program, authorized in FY 1986, are largely the result of the difficulties experienced in acquiring appropriate building sites. The large appropriations provided to the Department under the Inman program authorization included full funding for all elements of these projects including site acquisition, design, construction, and capital equipment. The Department cannot obligate funds for construction, which is the largest component of the capital program budget until sites are acquired and the design completed.

The Department has recently made significant progress in acquiring sites and is currently executing 47 capital projects and major rehabilitations. Eighteen of these projects are under construction, 18 more are under design, and 11 are in site acquisition. We expect to complete 13 additional facilities by this year's end and 5 facilities in calendar year 1991. As the 29 projects which are currently in design and site acquisition proceed to construction the obligations relative to construction contract awards for these projects will consume most of these unobligated balances by the end of Fiscal Year 1991.

SENATOR HOLLINGS: Please provide a project-by-project listing of the $814,928,000 unobligated balance on September 30, 1989.

SECRETARY BAKER: The following is an accounting by project and program of the unobligated balances in the Acquisition and Maintenance of Buildings Abroad Appropriation as of September 30, 1989.

Acquisition and Maintenance of Buildings Abroad
Unobligated Balances
As of September 30, 1989
(dollars in thousand)

Project	Amount	Project	Amount
Algiers	$ 907	Abu Dhabi	$ 967
Abidjan	2,336	Amman	7,306
Ankara	1,916	Bangkok	3,284
Beijing	13,547	Beirut	2,044
Belgrade	5,600	Bissau	375
Bogota OBX	678	Bogota OBC	57,542
Bonn OBC	10,254	Bonn SDA	2,959
Budapest OBX	2,305	Budapest SDA	15
Cairo II	39,554	Cairo MSG	338
Cairo I	4,280	Calcutta	749
Canberra	1,785	Caracas	30,738
Dhaka	596	Djibouti	2,597
Doha	17,702	Gaborone	409
Geneva	5,639	Georgetown EMR	500
Georgtown OBC	4,142	Guangzhou	1,151
Istanbul	32,335	Izmir	5,714
Khartoum	33,660	Kingston	10
Kuwait	36,075	La Paz	44,131
Lahore	1,703	Lima	63,966
London SDA	1,917	Manama	2,152
Mexico	584	Mogadishu	1,131
Moscow EOB	6,453	Moscow NOB	26,969
Muscat	831	Nicosia	5,111
Osaka-Kobe	454	Ottawa	29,683
Paris Cocom	613	Pretoria	47,419
Port Moresby	88	Rabat	3,246
Riyadh	16,222	Sanaa	1,890
San Jose	1,424	San Salvador	18,749
Santiago	43,000	Seoul	7,542
Singapore	6,699	Shanghai	1,200
Tegucigalpa	4,081	Tel Aviv Rehab	10,802
Tunis	31,993	Other Agencies	9,672
Subtotal, Capital Program			$ 719,734

Other Programs:	
Leaseholds	29,262
Physical Security Upgrades	4,228
Fire-Life Safety	1,865
Energy Conservation	1,831
Seismic	3,005
Power Support	1,464
PCC Renovations	11,857
Asbestos	32
Maintenance of Buildings	17,892

Facility Maintenance Assistance	5,004
Furniture and Furnishings	1,362
Applied Engineering	402
Project Supervision	8,658
Program Management	2,404
Administration	5,928
Total Unobligated Balances	814,928

SENATOR HOLLINGS: As of March 30, 1990, how much of the $814,928,000 carried into FY 1990, plus the $293,465,000 additional 1990, has been obligated?

SECRETARY BAKER: The Department has obligated $226,830,727 of the Acquisition and Maintenance of Buildings Abroad Appropriation for the period October 1, 1989 to March 31, 1990.

SENATOR HOLLINGS: The budget does not give us any opportunity to compare the $45 million now being spent in S&E with the $65 million proposed for 1991 in the FBO Account. Please supply the details for both years that show the number of permanent positions and their costs for each year, and the costs of other objects. Please break out the contractual part by program so we can see where that portion goes.

SENATOR BAKER: Our budget provides for 13 permanent positions in Fiscal Years 1990 and 1991. These costs which are estimated at $629,000 in FY 1990 and $654,000 for 1991 are included in the Department's Salaries and Expenses Appropriation Request.

Other program expenditures including site security managers, local guards for construction projects, transit security, site modification and equipment, and Washington support will be financed from the Acquisition and Maintenance of Buildings Abroad Appropriation beginning in FY 1991. These costs are categorized by object class as follows:

Object	Description	FY 1990	FY991
1100	Temporary Salaries	$ 580	$ 702
1200	Travel	3,809	3,845
2300	Rents, Comm. and Utilities	1,444	1,951
2500	Other Services	35,646	44,796
2600	Supplies and Materials	131	151
3100	Personal Property	2,972	13,582
	TOTAL	$44,582	$65,027

During Fiscal Year 1990, the Construction Security Program will provide for the operations of secure warehouse facilities in Helsinki, Finland and Paal Belgium. Security surveillance and transit security will be provided in support of the Department's construction programs including major construction projects at Amman, Belgrade, Cairo, Georgetown, Lahore, La Paz, Manama, Mexico City, Moscow EOB, Nicosia, Port Moresby, Pretoria, San Salvador, and Sanaa and Santiago. The program will also support major facility renovations that impact on sensitive areas in Chancery buildings.

For Fiscal Year 1991, the Department proposes to continue operations of the secure warehouse facilities in Helsinki and Paal. Construction surveillance and transit security support will continue for projects under construction not completed in FY 1990. Security support will be provided for capital construction planned for Caracas, Khartoum, Lima and Paris.

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

SENATOR HOLLINGS: The Department's 1991 budget certainly reflects the fact that a former Ambassador to the United Nations is President of the United States. The Department's largest increase, $543.5 million is for Contributions to International Organizations, of which $463,595,000 is for our arrearages.

However, let us first look at fiscal 1990. When section 614 is repealed, a total of $614,952,000 will be available. We are advised that the Department plans the full 1990 request of 45 international organizations. The one exception is the Food and Agriculture Organization which is scheduled to receive only $29,481,000 of the $61,100,000 assessment.

Why is FAO treated differently than the other international organizations?

SECRETARY BAKER: FAO stands alone as the only UN system agency that has not adopted a consensus based decision-making process on budgetary matters which ensures that major contributors have significant influence over the size and composition of the approved budget. FAO's three percent real growth 1990-91 budget was adopted by majority vote at the FAO Conference in November, 1989 over the objection of member states (including the U.S.) paying over fifty percent of the organization's assessed contributions.

On a more positive note, a consensus resolution on program reform was adopted by the Conference in November, 1989. While this resolution was not as comprehensive as we would have liked, it represented a major improvement over the bland reform resolution adopted by vote in November, 1987.

There are encouraging signs of increased understanding and support, from both donors and G-77 recipients, for U.S. views on program and budgetary reform matters. While its efforts are clearly not yet sufficient, FAO is moving in the right direction.

In order to retain our vote, we paid FAO only $18 million from FY 1990 funds. The additional $11 million currently reflected in the budget for FAO will be used in its entirety (and may fall somewhat short) to make up exchange rate losses to pay fully our contributions to the other organizations in the account.

SENATOR HOLLINGS: What does the Department expect to happen at FAO between last December and October that prompts you to budget the full U.S. assessment for 1991?

SECRETARY BAKER: While we are not making assumptions about development in FAO, we believe it is necessary to be prepared to respond appropriately if the reforms we have sought begin to be implemented. While clearly not enough yet, there has been some progress in the area of budgetary reform. In particular, during 1988, FAO agreed to submit a budget outline, with program priorities to the joint program and finance committees for consideration. This budget outline process will continue in January 1991, when the committees consider the 1992-93 budget.

SENATOR HOLLINGS: The 1991 request includes $33,197,000 for the U.S. contribution to NATO an increase of $5,964,000. Does the lessening of tensions, and the withdrawal of U.S. troops in Europe, whatever the number, give us any hope for a reduction in this item?

SECRETARY BAKER: I do not foresee any possibility to reduce the projected 1991 contribution to NATO as a result of lessening of tensions and the likely reductions of some U.S. troops in Europe.

On the contrary, there will be pressure to increase this contribution, which represents our share of the NATO Civil Budget, as the political arm of NATO becomes more important. The unprecedented events of the past year, have already caused a dramatic increase in the workload of the NATO Headquarters.

The Civil Budget funds the activities of the civilian International Staff, which provides staff support for the political consultations taking place at NATO. During the past year, the scope, level and frequency of political consultation constantly increased to keep pace with the rapidly evolving situation.

In addition, the International Staff administers certain non-military multilateral programs. We hope to maintain and strengthen the role of NATO as a vehicle for political consultation and cooperation. Furthermore, we hope to expand the scope of NATO Civilian Headquarter's activity. For example, we are encouraging NATO to take on additional duties to coordinate verification activities to be agreed under the CFE and other arms control negotiations; and Heads of Government have already agreed to implement a new program of fellowships to scholars in Eastern European countries to study the democratic institutions of NATO members.

SENATOR HOLLINGS: Your 1991 Budget Submission is requesting $82,000 for The International Office of the Vine and Wine. Apparently we have supported this organization since U.S. membership was authorized by legislation in 1984. Why is this the first year that funding for this organization shows up in your budget submission? How was it funded in prior years? What other international organization funding requests are included in your budget submission but not separately identified?

SECRETARY BAKER: The U.S. contribution to The International Office of the Vine and Wine was previously listed in the budget requests for the International Conferences and Contingencies Appropriation. The contributions to new organizations are requested in the ICC Appropriation until U.S. membership is authorized by Congress and a determination is made whether any additional legislation is required. All requests for funding of U.S. contributions to international organizations are listed separately in either The Contributions to International Organizations or The International Conferences and Contingencies Appropriations.

SENATOR HOLLINGS: The justifications indicate that the $463,595,000 for the payment of the U.S. arrearages will be paid out at a rate of 20 percent per year over 5 years. Why is this not reflected in the appropriations language?

SECRETARY BAKER: The appropriation language establishes the request for the full amount required to pay U.S. arrearages to international organizations. The language would not include an extensive explanation of how the arrearages would actually be paid since this entails a policy decision of the Administration which is justified elsewhere in the FY 1991 budget request. The explanation of how this policy would be implemented is summarized in the Department of State FY 1991 Budget in Brief (page 57):

"The funds for payment of arrearages will be no-year funds paid out at 20 percent a year over five years. Payment of these arrearages will be directed toward special activities that are mutually agreed upon by the United States and respective international organizations, and their payment would be conditional upon such agreements."

SENATOR HOLLINGS: It is indicated that the arrearages "shall be directed towards special activities that are mutually agreed upon by the United States and the respective international organizations." I certainly support that, but do the treaties and agreements that cover the organizations allow us to do that? In the past, whenever someone has tried to limit our contributions, the State Department has always said that it wasn't possible.

SECRETARY BAKER: Any decision made regarding payment of U.S. arrears would have to take into account the financial regulations of the international organizations. In some instances, the regulations require that a portion of the payment go toward replenishment of depleted reserves (e.g., Working Capital Fund). This notwithstanding, and before any arrearage payments are made, we would consult with the respective organizations and consider carefully all activities on which mutual agreement can be reached.

UNESCO

I have received a letter dated April 12th from former Senator Robert T. Stafford, the Chairman of the United Nations Association-USA Project on UNESCO. The letter will be made of the record but Senator Strafford says that his panel "is persuaded that the time is ripe for a U.S. return" to UNESCO. Five (5) days later the Department issued its report which concludes that the time is not yet ripe to reopen the question of renewing United States membership in UNESCO.

The letter follows:

LETTER FROM ROBERT T. STAFFORD, CHAIRMAN, UNITED NATIONS ASSOCIATION OF THE UNITED STATES OF AMERICA

April 12, 1990

Hon. Ernest F. Hollings
125 SROB
Washington, D.C. 20510

Dear Ernest:

In October, when I sent you the report of the panel I have been chairing on UNESCO, the U.N. agency's General Conference was just beginning. At that point we conditioned any recommendation for a possible U.S. reentry on the Conference taking positive actions on reform.

Our panel has now completed its assessment of the progress made in the last six months, and I am pleased to enclose our Supplementary Statement. I hope you will have a chance to look through it. In view of UNESCO's recent progress, we recommend an official review process to weigh U.S. interests in the agency, involving the leaders of American science, education and culture and all relevant federal agencies. Our own panel is persuaded that the time is ripe for a U.S. return.

The world has changed enormously since 1984. In the emerging world order of the 1990s, U.N. bodies will be increasingly important. Our group senses that the U.N.'s arm in education, science and culture--our "competitiveness" sectors--will share in that growing importance.

I hope I can look to you to take an interest in promoting action on our recommendations.

Sincerely,

Rob

Robert T. Stafford
Chairman
UNA-USA Project on UNESCO

P.S. I also enclose an interesting assessment of UNESCO developments by a pragmatic British commentator in the London Financial Times, as well as my own recent piece in the Christian Science Monitor.

SENATOR HOLLINGS: The U.S. withdrew from UNESCO in 1984 due to the excessive politicization, poor management, and long-term lack of budgetary restraint. Without reporting the whole report, how much progress has UNESCO made in those areas and why aren't they sufficient for the U.S. to rejoin UNESCO?

SECRETARY BAKER: Following the conclusion of the 25th General Conference of UNESCO this fall, we undertook a thorough review of the activities of UNESCO since the United States withdrawal in an effort to assess whether to reopen the question of U.S. participation in that organization as a member government. We consulted broadly within the government, with interested groups outside of the government, with people familiar with UNESCO, with people who have worked with UNESCO and with other member governments. The results of this review were reported to the Congress on April 17.

Our conclusion is that in the three principal elements of concern to the United States government -- the politicization, management, and the budget and program of UNESCO -- little, if any, true reform has taken place since U.S. withdrawal.

On politicization, our report lays out in some detail the various activities with respect to the PLO and Israel that have concerned us. We also continue to have doubts about UNESCO's views on freedom of the press.

In terms of management, we point out that serious problems persist and that independent observers have reached the same conclusions. Director General Mayor's announcement, in the so-called "Green Notes," of his restructuring plan was formulated without consultation with member states or UNESCO's governing bodies and has evoked additional expressions of concern.

With regard to the budget and the need for program concentration, we note that most of the changes which have been made since the departure of Mr. M'Bow have been more in the nature of reshuffling existing programs than any fundamental restructuring.

In light of this, we came to the conclusion that the time is simply not ripe to reopen the question of whether to rejoin the Organization.

SENATOR HOLLINGS: If we were to rejoin UNESCO, how much would have to increase the "Contributions to International Organizations" appropriation?

SECRETARY BAKER: The cost of U.S. return to UNESCO, which we would estimate at a 25 percent share of its budget, would be in the range of $50 million per year.

GREAT LAKES FISHERY COMMISSION

SENATOR HOLLINGS: Mr. Secretary, we all recall your taking Foreign Minister Shevardnadze fishing out in Jackson Hole. We also recall that the President likes to fish. Unfortunately, your interest doesn't transcend to the Great Lakes. Perhaps you ought to take Mr. Shevardnadze fishing on Lake Erie next time so you can get a better appreciation of the problem.

Last year we provided an additional $1,300,000 above the budget request for sea lamprey control for the Great Lakes Fishery Commission. While your budget speaks eloquently to the sporting and economic results of the sea lamprey control measures, the Department proposes to reduce the Commission's funding by $1,201,000. We are informed that the Commission requested $6,613,000 for 1991, including $6,188,900 for sea lamprey control, but you go the other way and cut that item by $1.2 million.

In addition, Senator Glenn has introduced a bill to control the Zebra mussel which closed off the water intake pipe of Monroe, Michigan for 3 days, and threatens the water supply of Cleveland. The Zebra mussels endanger the fisheries of Lake Erie by stripping the lake of microscopic feeder plants. As you know, when the bottom of the aquatic food chain collapses, the result will be that there will be no little fish to grow up into big fish.

Mr. Secretary, why are you cutting the funding of the Great Lakes Fishery Commission?

SECRETARY BAKER: The Commission is one of nine funded by the Department's International Fisheries Commissions account. The Department recognizes the impressive contributions of the Great Lakes Fishery Commission to the protection of important commercial and sports fish populations of the Great Lakes. As you know, the Department considers the budgets of the individual commissions within the overall availability for this account. Unfortunately, we are not able to fully fund the FY 1991 request of the Great Lakes Fishery Commission. The Department believes that the budget request for the International Fisheries Commissions account represents a careful balance among the needs of all of the commissions.

SENATOR HOLLINGS: In the President's meetings with Prime Minister Mulroney of Canada, have they ever discussed sea lamprey control and the Zebra mussel problem on the Great Lakes?

SECRETARY BAKER: Not to my knowledge. If they were to discuss these specific problem species, we would hope that they would do so in the context of the whole Great Lakes Basin ecosystem. The problems of the ecosystem are problems which the United States and Canada must both address; they are difficult problems and there are no easy, inexpensive solutions. We hope both nations can cooperate to begin to solve them.

INTER-AMERICAN TROPICAL TUNA COMMISSION

SENATOR HOLLINGS: Earlier this month, the Starkist Seafood Company and other major tuna canners announced that they would not purchase any tuna caught in association with dolphins. Their decision will apply to foreign-caught tuna as well as tuna caught by U.S. vessels. Over the years, the Inter-American Tropical Tuna Commission has worked with the foreign fleets to improve their compliance with U.S. marine mammal policies and regulations. My concern is that the Commission's budget has not kept pace with the additional responsibilities we have placed on them.

I understand that the Commission currently faces a budget shortfall of about $680 thousand, and thus far in 1990 they are operating in the red. How does the State Department plan to deal with this problem?

SECRETARY BAKER: The Department shares your concern over the budget problems faced by the Inter-American Tropical Tuna Commission, which have arisen largely because of the expanded responsibilities of the Commission with respect to dolphin protection. There is little we can do in the short term to resolve these problems, but we intend to address this issue in future budget considerations. We are fully aware of the need for increased funding for the Commission if it is to fulfill the responsibilities which have been assigned to it by its member nations.

SENATOR HOLLINGS: How are the Commission's budget requirements likely to be affected by the recent tuna canner decision to sell only "dolphin-safe" products?

SECRETARY BAKER: It is not immediately apparent how the recent decision of U.S. tuna canners to buy only "dolphin-safe" tuna will affect the Commission's budget requirements. If this decision results in reduced U.S. fishing and consumption of tuna from the eastern Pacific Ocean, there could be a decrease in the U.S. share of the Commission's budget. This could have a disastrous impact on the ability of the Commission to maintain effective tuna conservation and dolphin protection programs.

SENATOR HOLLINGS: What is the State Department doing to encourage a stronger international framework for dolphin protection -- and to get foreign countries to provide a larger share of the cost of such efforts?

SECRETARY BAKER: We intend to vigorously pursue international efforts to protect dolphins through the Inter-American Tropical Tuna Commission. The next meeting of the Commission will be held June 26-28 in Washington, D.C. and we expect this issue to be a significant part of the meeting. We are prepared to explore the possibility of foreign countries paying more for the dolphin protection efforts of the Inter-American Tropical Tuna Commission. We believe this will be a difficult issue, however, considering the ability of many countries involved to pay more and the impact which embargoes on their tuna products could have on their willingness to cooperate.

THE ASIA FOUNDATION

SENATOR HOLLINGS: The FY 91 budget request for The Asia Foundation is $13,978,000, an increase of only $78,000 above the FY 90 appropriated level. Given the historic opportunities presented to strengthen democratic institutions including judiciaries and national legislatures in countries as diverse as Mongolia, Nepal, Pakistan and Laos, how will the Foundation respond without additional funds?

SECRETARY BAKER: The Asia Foundation will be able to respond to the highest priority programming opportunities presented across Asia and the Pacific with the President's 1991 budget request.

As is the case in times of tight budgets, the Foundation will be forced to make these trade-offs in order to fund our highest priority programs.

SENATOR HOLLINGS: What programs or activities will The Asia Foundation not be able to undertake at $13,978,000 level?

SECRETARY BAKER: The President's request of $13.978 million will require across-the-board belt-tightening by the Foundation. As I stated earlier, as is the case for most of our programs, the Foundation will have to make trade-offs in order to fund its highest priority programs. It would be premature at this time to speculate about what the Foundation will not do in 1991.

SENATOR HOLLINGS: How much did The Asia Foundation Request of the Department?

SECRETARY BAKER: The Asia Foundation originally requested $20 million for FY 91.

SENATOR HOLLINGS: What was the Department of State's original request to OMB for The Asia Foundation for FY 91?

SECRETARY BAKER: The Department of State originally requested $16.2 million for The Asia Foundation. The Department and OMB agreed in the settlement process to a request of $13.978 million in FY91.

SENATOR HOLLINGS: What progress did the Foundation contemplate doing within the amount they requested of the Department for 1991 that cannot be performed at the $13,978,000 level? (Please indicate which of these programs were supported in the Department's request to OMB.)

SECRETARY BAKER: The Foundation included in its request to the Department the following:

a) Democratic Institutions: An additional $2 million to enhance its support for building and strengthening democratic institutions in countries where democracy is emerging, and to encourage democratic movement where there have been setbacks or little progress. These funds will be used in country and regional programs to strengthen free and fair elections, civic education, human rights groups, national parliaments and provincial legislatures, independent judicial systems and improved court management, open media and non-governmental organizations that are essential for democratic, pluralistic societies.

In allocating additional funds, priority will be given to expanding programs in the Philippines, Pakistan, and Nepal, with modest increases in programs in Taiwan and Korea. We also expect to begin programs in Taiwan and Korea. We also expect to begin programs in Mongolia, and the Foundation is ready to assist Sri Lanka should conditions permit.

b) Economic Liberalization: An additional $700,000 to expand existing programs that promote economic liberalization and more open trade investment environments in the region. Assistance will be focused on support for institutions in the formal and informal sector, policy analysis, and improved administration of the legal underpinnings of economic reform. Some of the issues to be addressed in country and regional programs are: streamlining investment licensing, deregulating banking controls, reducing tariff and non-tariff barriers, strengthening capital markets, and strengthening laws with respect to intellectual property rights, environmental protection, anti-trust, commercial codes, and alternative dispute resolution.

At the regional level, The Asia Foundation will expand its support for the U.S. National Committee for Pacific Economic Cooperation and work with the Association of Southeast Asian Nations (ASEAN) on mechanisms for resolving U.S.--ASEAN trade disputes.

c) Geographic Programs:

1) an additional $200,000 to expand its programs with the nine island nations of the South Pacific, particularly in the areas of education, the judiciary, diplomacy, and free-market trading systems;

2) $200,000 for new requests from Laos, such as training for Laotian diplomats, the creation of a Laotian Chamer of Commerce, training for the policy research staff of the Ministry of Economics, Finance and Planning, and the elevation of the country's only college to university status;

3) $100,000 for additional leadership and skills training for Cambodians in the non-communist caps along the Thai-Cambodian border;

4) $100,000 for new programs to help Afghans in Pakistan prepare for the possibility of returning to AFghanistan, including training in business, public administration, and reconstruction.

d) Center for Asian-Pacific Affairs: An additional $100,000 for a major project to enhance its other work in strengthening democratic institutions. This project would involve on-going analysis by Asian and American experts of the democratic process in Asia and recommendations for likely next steps.

e) Inflation and Administration: $700,000 to offset inflation over the last three years (when the Foundation's General Grant has remained at virtually the same level) and to cover the administrative and personnel expenses of an expanded program budget.

In its $16.2 million request to OMB, the following increases over this year's base figure of $13.7 million were endorsed:

A $1.0 million increase in the Foundation's Democratic Institutions programs. At this level, the Foundation would have been able to increase its programs in election management, civic education, human rights, legislative development, judicial administration, the media, and development of non-governmental institutions. However, these increases would have been largely limited to the priority countries of the Philippines, Pakistan, and

Nepal, with practically no program increases for Taiwan, Korea, Mongolia, and Sri Lanka.

The Department endorsed an increase of $400,000 in the foundation's programs for Economic Liberalization. This would have enabled the Foundation to expand existing programs that promote economic liberalization and more open trade and investment environments in the region, but at less than half the level the Foundation estimates is necessary in this important area.

Regarding geographic expansion, the Department endorsed increases of $100,000 each for programs with Laos, the Pacific Island nations, Cambodia, Afghanistan, and the Center for Asian Pacific Affairs. These would have allowed the Foundation to take advantage of some of the new opportunities that exist.

Finally, in acknowledgement of the loss in purchasing power the Foundation has sustained over the past three years due to inflation and no increases in its appropriation, the Department endorsed an increase of approximately $300,000 to offset inflation and cover the administrative and personnel expenses of an expanded program budget.

SENATOR HOLLINGS: The Asia Foundation has been a major supporter of the U.S. National Committee for Pacific Economic Cooperation. In light of the heightened interest in Pacific Economic Cooperation, as exemplified by the creation of APEC, what are the Foundation's plans for work in this important area in the coming year?

SECRETARY BAKER: Since the establishment of the U.S. National Committee for Pacific Economic Cooperation in 1984, The Asia Foundation has provided:

1)Base funding for the Washington office of the U.S. National Committee;

2) In-kind support including maintaining the West Coast office of the U.S. National Committee at the Foundation headquarters in San Francisco;

3) Administrative and substantive support for U.S. National Committee activities, meetings and publications; and

4) Funded and hosted U.S. National Committee conferences such as the 1985 first Pacific Trade Policy Forum meeting, the first Agriculture Trade Policy Task Force meeting in 1988 and semi-annual meetings of the U.S. National Committee.

Recognizing the success and importance of the U.S. National Committee and of the PECC process, The Asia Foundation will continue to support the U.S. National Committee in FY 1991.

The Foundation will also increase its support for the Pacific Economic Outlook (PEO) Project. The PEO is an economic forecast for 15 economies in the Pacific Rim and in its first ministerial meeting in 1989, APEC agreed that the PEO project would be the starting point for discussions on trade and investment date in the region. Given the significance that the APEC ministers have attached to the PEO in their discussions on economic trends in the region, the Foundation will be increasing its involvement in and commitment to the PEO.

The Foundation will also be exploring ways of assisting other policy initiatives assigned to the U.S. National Committee. These include environmental and science and technology concerns.

In addition to its support of the National Committee and APEC initiatives, the Foundation has been instrumental in developing Asian interest and expertise on issues of Pacific Economic Cooperation.

In Thailand, for example, since 1987, over 400 leading legislators, civil servants, lawyers, scholars, and businessmen have participated in Foundation-sponsored training programs and seminars related to intellectual property protection. The Foundation also supported the training of 200 judges in IPR law and the publication of the country's first casebook on intellectual property law. Every court and library in the country now uses this volume. Recently, the Ministry of Justice requested Foundation assistance for the establishment of a separate court for intellectual property rights law, a proposal that was put forth at the Uruguay round of GATT negotiations in February.

In FY 1991 the Foundation will be furthering the development of the U.S. National Committee through institutional, in-kind, and other support as noted above, and will be enhancing the work of APEC through the PEO project and other policy analysis in the environment and science and technology.

In Asia the Foundation will be strengthening the legal underpinning of economic reform and administration of the law; building public support for policy changes through the media and non-governmental organizations, thereby facilitating smoother pacific economic cooperation, and improving policy analysis and institutions in selected countries.

AMERICAN INSTITUTE IN TAIWAN

SENATOR HOLLINGS: What was AIT's FY 1991 Budget request to the Department of State?

SECRETARY BAKER: The American Institute in Taiwan submitted a budget request to the Department of State for $16,382,000 for FY 91.

SENATOR HOLLINGS: How much did the State Department propose to OMB?

SECRETARY BAKER: We proposed to the OMB a budget of $12,487,000.

SENATOR HOLLINGS: How much was finally proposed for AIT IN THE Administration's FY 91 budget and how much is authorized for 1991?

SECRETARY BAKER: The President's Appropriations request for 1991 is $12 million of which $11.752 million is authorized. The Department has submitted to Congress a request for supplemental authorization for this appropriation which will bring this account up to the $12 million request.

SENATOR HOLLINGS: How does the appreciation of the Taiwan currency and price inflation impact on the operations of AIT given the cut in its budget request? Can you give us some specific examples of price increases?

SECRETARY BAKER: The Taiwan dollar, after rising dramatically against the US dollar in 1987 and 1988, remained relatively steady during calendar year 1989, opening the year at NT$27.75 to one and ending the year at NT$26.15 to one. Even this seemingly modest appreciation of 1.6 New Taiwan dollars is estimated to have cost us 480 thousand US dollars in lost purchasing power. A larger problem for us, however, are the rapidly-rising costs of our rents and other local costs. The rent at one of our office buildings had been until recently the equivalent of 275,000 US dollars each year; the market values for Taipei commercial office space had climbed so sharply in 1988 and 1989 that, when it came time to renew, the landlord asked for 1,603,000 US dollars per year for 1990 and 1991. This was a six-fold increase! Rents are climbing so fast that it is impossible to lease commercial space for more than two years at a time -- five year leases are simply no longer available.

SENATOR HOLLINGS: We understand that $600,000 of the increase for 1991 is earmarked for the foreign national employees' pension fund. could you explain how this arrearage came about? Does the $600,000 fully fund the arrearage?

SECRETARY BAKER: The local employees pension fund, required by Taiwan's 1985 Labor Act, was established by AIT/T Oct 1, 1988. At that time it was determined that, since a number of AIT employees already had many years of service, the fund faced an accrued liability (FY 1979-88) estimated at $1,272,000. In addition, it was also determined that, beginning in FY 1988, future annual contributions should be paid of $298,000.

AIT's management, having no ability to pay the 1.3 million dollar arrearage in one lump sum, first planned to amortize the liability over a four-year period at $318,000 per year. This method resulted in an additional interest cost (the interest lost by not having established the fund earlier) of $102,000 per year for those four years resulting in a total annual arrearage payment for each of those four years of $420,000. These calculations were made when the exchange rate was 28 NT dollars to 1 US dollar.

On October 13, 1988, AIT managed to deposit $718,000 into the fund, consisting of the FY 1988 annual contribution of $298,000 plus the first of the four $420,000 arrearage payments. In FY 1989 AIT deposited the annual $298,000 but could not make the second arrearage payment. In FY 1990 AIT will make the $298,000 annual deposit, but again will not make the $420,000 arrearage payment. For FY 1991 the arrearage will amount to a total of $1,260,000 (three times $420,000) plus the additional interest which will accrue because of not having made arrearage payments in FY 1989 and FY 1990, and the additional costs incurred because the exchange rate is higher (26 to 1 at present versus 28 to 1 in October 1988). The FY 1991 AIT budget request contains the annual $298,000 annual contribution plus $600,000 toward the arrearage. The remaining arrearage at the end of FY 1991 will be $749,000 including interest ($15,600) and additional currency appreciation ($73,400).

SENATOR HOLLINGS: The Omnibus Trade and Competitiveness Act stipulates that AIT's Taipei office should have a commercial section commensurate with that of the Embassy in Seoul, Korea. Has the Institute complied with this provision?

SECRETARY BAKER: The Seoul Commercial Section has 7 full-time American career professionals -- six Commercial Officers and a secretary. AIT's Commercial Unit had only two officers and no secretary. Because of constrained resources AIT has been unable to fulfill the provision of the Omnibus Trade and Competitiveness Act. Through stop-gap measures we have managed to temporarily augment our staffing slightly. We sought a Commerce Department officer on a temporary secondment in late 1988 and have extended him in Taiwan for an indefinite period of time. We have also retained locally a contract American employee and another temporary American employee (a "PIT") who will reside in Taiwan only until the summer of 1991. However, this is a jerry-built solution we cannot sustain.

SENATOR HOLLINGS: Were there any other high priority items left out of the AIT budget request?

SECRETARY BAKER: No.

SENATOR HOLLINGS: In short, how much would AIT need to meet its most urgent priorities and fulfill the provisions of the Omnibus Trade Act?

SECRETARY BAKER: Although some of our lower priority activities may be underfunded, we feel that our highest priority activities, necessary to our mission, can be accomplished within the FY 1991 budget request.

PERSONNEL MATTERS

SENATOR HOLLINGS: The Subcommittee understands that the State Department has established a workload measurement unit within its personnel office. What is the status of this unit? What projects are underway? What are the anticipated results? Will this provide the Subcommittee with a better justification of State's personnel requirements? When? How?

SECRETARY BAKER: The workload measurement unit consists of a staff of three management analysts, and is part of the Office of Resource Management and Organization Analysis within the Bureau of Personnel. The unit is currently writing a program description, meeting with other agencies who have established workload measurement programs, identifying locations and dates of related training courses, and developing an action plan.

All functions and organizations within the Department will be studied, and because the scope of the program is so broad, it will take several years to complete. In some instances, we anticipate using contractor personnel to assist us in conducting the studies, due to the large amount of data with which we will be working. The Functional Needs Study of Foreign Service Generalists, and the Office of Foreign Buildings Maintenance Staffing Study are currently in progress. Although these studies were begun prior to the establishment of the workload measurement program, the products from these studies will be useful to the Department.

The workload measurement program will provide justification of requests for personnel resources that are based on substantiated figures. We will use established work measurement methodology, industrial engineering and other management science techniques to determine staffing requirements, and improve the distribution of resources within the Department's Foreign Service and Civil Service organizations.

SENATOR HOLLINGS: The Under Secretary for Management testified before a House Foreign Affairs Subcommittee that there needs to be an examination of the Department's workload in detail to determine how to perform the work in the most efficient and effective manner possible and to decide who should be doing the work in question. The Under Secretary said he plans to use analytical tools employed in the private sector for this analysis. Please provide the Subcommittee with some background on this effort. Who is doing the work? What is the cost? What is the status of the effort and when will it be done?

SECRETARY BAKER: We have recently undertaken a three year program to study the organizational structure of the Department of

State, utilizing the management tool of Activities Value Analysis (AVA). Most of the work will be done by Department of State personnel, but we have sought the assistance of a consulting firm, Hay Systems, to train and guide us in the techniques of "value analysis", as well as provide the Department with the automated data processing support which a large scale AVA study requires. We expect the cost of the contract will be approximately $1 million per year. The end product will tell us what are the most effective and efficient ways of performing our essential tasks, give us a better understanding of the functions we may or may not wish to continue, and indicate areas where the work product is redundant or clearly non-essential.

During the first phase, management and rank-and-file employees, organized as AVA committees, identify every activity performed in their organization and evaluate the relationships which exist between the activities performed and the accomplishment of the organization's functions and overall mission. Collected data is entered into a relational data base which permits manipulation of data to graphically portray the actual patterns of activities (inputs and outputs) as they currently take place, and allows employees to test alternative ways of organizing and structuring their activities to more efficiently and effectively accomplish their mission. After identifying problems and developing potential solutions, the AVA committees in each bureau of the Department will develop an implementation action plan of organizational improvements for approval by the Department's senior management.

During this the first year of the AVA project, we are examining the bureaus which report to the Under Secretary for Management. If successful, we will do the rest of the Department during the second and third years. The Bureau of Finance and Management Policy and the Bureau of Personnel are the first "M" bureaus to participate. Their studies, which just recently got underway, will be completed in July.

SENATOR HOLLINGS: A 1989 report on the Foreign Service (Bremer Commission) stated that many officers lack the discipline to accept unappealing jobs. What is being done to address this issue?

SECRETARY BAKER: As the substantive requirements placed upon the State Department have expanded, and our numbers of people have not, we have been compelled to implement some procedures to ensure adequate staffing to meet the Department's needs. This often involves the assignments of people to so-called "unappealing jobs." We would broadly define such jobs as those perceived by employees as not career-enhancing, or as jobs abroad where adequate medical facilities or schooling for dependents is unavailable, or where other personal requirements cannot be met. We have in place, and are regularly using, procedures to identify and assign employees to meet urgent service needs. We utilize these procedures to assign people to positions which they have not sought, but for which they are professionally qualified, and for which there is an urgent service need.

SENATOR HOLLINGS: The Bremer report noted that the Department must have a more effective means to determine its personnel requirements. These requirements have developed incrementally with little effort to relate the current requirements to actual workload. There is no way to judge the current position structure.

The Foreign Service cannot say with any confidence whether its current top-heavy structure is necessary or desirable. No provision is made for funding positions to cover officers on transfer. As a result, large and regular gaps exist in staffing. Please provide the Subcommittee with your plans for addressing these concerns.

SECRETARY BAKER: The Department has undertaken two activities recently to address just these concerns. The Functional Needs Study is designed to provide data necessary for a reexamination of our manpower planning procedures, the cone system, promotion precepts, training requirements, position classification and assignment criteria. This study will collect information about tasks currently performed in specific jobs held by mid-level and senior Foreign Service officers in domestic and overseas assignments, and will relate them to the knowledge, skills, and abilities required to perform them well.

Secondly, the Department has entered into a contract for an Activities Value Analysis (AVA) of those bureaus under the direct supervision of the Under Secretary for Management. AVA is a modern management tool for systematically analyzing the objectives, structures, functions, procedures and systems of an organization. The main purposes of Value Analyses are to reduce wasted resources, eliminate redundancies, achieve better central controls and achieve managerial prioritization. If successful in the management-related bureaus, the AVA project will be expanded to include the rest of the Department.

SENATOR HOLLINGS: The 1989 Thomas Commission report said long-range planning is an intrinsic element in effective human resource management. Long-range planning can forecast future agency missions and appropriate employee development. What long-range planning systems are in place within the State Department?

SECRETARY BAKER: Through the Functional Needs Study, the Activities Value Analysis, and other planning instruments, the Department is working to improve its long-range planning capability. However, because the State Department's programs and activities are, in large measure, a function of events and trends overseas, our long-range planning systems is must be flexible enough to respond, for example, to recent events in Eastern Europe.

SENATOR HOLLINGS: The Thomas Commission said State should set hiring and promotion numbers against a defined position structure. Does State plan to do this? If so, when and how. If not, why not?

SECRETARY BAKER: The Department's current intake and promotion practices are already set against the position structure, but the steps outlined below should better define the requirements and strengthen that linkage. Those steps include:

a. The performance of a functional needs analysis to, among other things, identify by position the myriad tasks and associated skills each job entails;

b. The development of a Multifunctional cone to include those positions which involve substantive policy analysis/formulation/execution, as well as the application of management skills such as staff supervision, resource management, and significant interagency liaison/coordination;

c. A review of all positions currently designated as International Relations Officer General (IROG) to determine the exact nature of their job content in relation to the four existing cones so that intake and promotion planning for those cones and more closely aligned with positions requirements.

SENATOR HOLLINGS: The Grove report cited numerous management deficiencies, such as duplicative elements in the bureaucracy and lack of clear lines of authority and responsibility. These are not new problems and their persistence points to the need for better management skills in the Foreign Service generalist core, which manages most of the Department's activities. What is the Department doing to address these matters?

SECRETARY BAKER: While the Department regularly seeks to sharpen the management skills of Foreign Service generalists through training and broadening assignments, the particular problems identified in the Grove report were more specifically focussed on structural and budgetary issues. Many of the structural issues were those which need to be reviewed periodically by any large organization, and the budgetary issues had arisen because of a serious funding deficit in FY 1988.

The deficit problem which faced the Department in August, 1987, was such that we could not continue to operate at a current services level. Deputy Secretary Whitehead recommended to the Secretary a number of cost reductions to live within funding levels. The Grove Report analyzed the recommendations of the Whitehead Report to achieve an effective reduction of operations within the Department of State in a worst-case scenario. However, with the increase in State funding in December, 1987, many of the draconian measures could be dropped. Still, a number of recommendations were implemented, including the reduction of a number of redundant positions in OES, CIP, and the Policy Planning Staff, as well as some temporary positions in USOAS.

One portion of the Grove Report, "Administrative Functions for the 1980s," recommended revisions to policies in the Department to promote more effective administrative management. A senior management group reviewed the report and supported 31 recommendations. Twenty-five of these recommendations were implemented quickly. The other six were multi-year efforts and are in various stages of execution. Through the recommendations, the Department of State has better integrated the information management function within the Department and formed an information management advisory board, consolidated FTE and position management within the Office of the Director General, delegated to individual bureaus the authority to classify certain PIT positions, gave to the Bureau of Medical Services authority over certain types of medical travel funds, and placed a greater emphasis on assignments to the Foreign Service Board of Examiners.

SENATOR HOLLINGS: In reviewing the Department's budget submission, we noted that there were staff increases between FY 1989 and FY 1990 in many of State's headquarters bureaus and offices. Often these increases occurred in the immediate offices of the assistant secretary. In contrast, overseas positions have remained relatively constant. What is the justification for this increase in administrative positions to support the same level of overseas presence? What is the relationship of headquarters support to our overseas presence? Is more substantive activity, such as political and economic reporting, being done from Washington or is the Washington growth evidence of bureaucratic growth?

SECRETARY BAKER: I believe the primary cause for the increase your question refers to is the transition from one administration to another. As new key officials arrived in the Department, they brought in new support staffs with them, while retaining prior administration staff members to assist in the transition. It is anticipated that as we move into FY 1990 the number of support staff will return to a level approximating the level that existed before the transition. The only permanent increases should be in those areas where new program requirements have increased the workload.

SENATOR HOLLINGS: Each year, studies of the Foreign Service personnel system reveal new as well as longstanding problems. Why do these problems exist? Are they inherent in the nature of the Foreign Service system? Is it time to look at abandoning the Foreign Service system in favor of the Civil Service or some similar system? If a new system is not called for, please explain how the Foreign Service system serves the need envisioned when it was created.

SECRETARY BAKER: On balance, Senator, I believe the record will reflect that the Foreign Service system has worked, and continues to work, fairly well. As evidence, I cite the fact that in this century the Foreign Service Act has been rewritten only three times: in 1924, 1946 and 1980. More recently, despite some of the problems to which you refer, I would point out that we haven't needed any major legislative modifications to the Foreign Service Act of 1980 in ten years.

Many of the problems identified in various studies of the Foreign Service personnel system are, in my view, more reflective of changes in American society and a changing world than they are evidence of a need for fundamental change in our personnel system. Such areas as the need for "service discipline" may be reflective of the fact that, say, twenty years ago, fewer Foreign Service officers had to juggle the needs of their spouses' careers and ambitions than they do today. Indeed, twenty years ago, a female Foreign Service officer was obliged to quit the Foreign Service if she married!

The 1980 Foreign Service Act refined the "up-or-out" principle contained in the 1946 Act. This was designed to make explicit the realistic fact that our position structure and service needs cannot support so many senior officers, and more officers will retire at the end of a 20 or 25-year career.

I do not believe that we should consider abandoning the Foreign Service personnel system in favor of the Civil Service or another system, primarily because of the clear evidence that our current system, despite its problems, works. I believe such Foreign Service personnel characteristics as rank-in-person, promotion based on competition with one's peers, and the ability to be terminated from the Foreign Service based on poor performance are principles which must be preserved.

In sum, our problems need to be addressed. But their existence does not point to a need for fundamental change in our system. It has been, and will continue to be a challenge to run effectively a worldwide personnel system. That challenge will become greater as we compete, for the very best people, with changes in American society and with increasingly attractive private sector alternatives.

HONORING FORMER EMPLOYEES OF THE DEPARTMENT

SENATOR HOLLINGS: It has been suggested to the Subcommittee that funds be given to the Department to honor two distinguished American diplomats.

The first one is Benjamin Franklin, who served as representative of the Philadelphia Assembly in England from 1757-1773. The Friends of Benjamin Franklin House are seeking to rehabilitate the house he occupied on London's Craven Street into an American cultural center. Section 1004 of the Foreign Relations Authorization Act, 1990 and 1991, contains Congressional support of preserving this house, which is the only surviving home of Benjamin Franklin. Is the Department interested in participating in this project and do you have the authority to participate if funds were available?

The second person is a more recent diplomat, the Honorable Dean Rusk who served as Secretary of State in the Kennedy and Johnson Administrations. The University of Georgia is looking for assistance in constructing the Dean Rusk Center for Public Affairs. Has the Department been contacted about this, and again do you have the authority to participate if funds were available?

SECRETARY BAKER: We applaud efforts to commemorate the contributions of American diplomats, particularly those as distinguished as Messrs. Franklin and Rusk, to the well-being of our nation. As a general rule, however, we believe that such activities are most appropriately carried out directly through private sector initiatives. The Department does not currently have general statutory authority to make contributions to such non-government entities. With respect to the Benjamin Franklin House in London, it is our understanding that the Congressional intent underlying Section 1004 of the FY 90-91 Authorization Act was to limit the official government role to support for the goals of the Friends of the Benjamin Franklin House, but not direct funding. We have received no communication from the University of Georgia requesting our participation in the Dean Rusk Center project.

OVERSEAS PRESENCE

SENATOR HOLLINGS: The State Department has a Special Embassy Program (SEP) at 32 embassies, the purpose of which is to reduce their workload and ultimately their size. The Subcommittee understands that State is considering expanding this program. Please report on the impact the program has had in terms of workload at these embassies. Have any personnel reductions occurred at these embassies? If so, where have the personnel been reassigned?

SECRETARY BAKER: The Special Embassy Program was planned in two phases. The first phase, which has just ended, was meant to institutionalize a new way of managing our smaller embassies, to develop new procedures, and to test workload reduction ideas. The objective of this initial phase was to preclude any growth in personnel at SEP posts except under extraordinary circumstances. The Department has now informed chiefs of mission at SEP posts of a series of new measures that are being implemented. These include, among others, elimination or streamlining of many reports, the provision of labor-saving technology, the greater use of regional offices and neighboring larger embassies to support SEP posts, and special personnel procedures. In this new phase there should be savings in money and positions. Since nothing like the SEP has been tried before, it is difficult to predict the magnitude of savings at this time.

SENATOR HOLLINGS: Please explain State's efforts to manage the overseas presence of federal agencies through its role under National Security Decision Directive (NSDD) 38. Can State report on any reductions in agencies' presence abroad? Which agencies and where?

SECRETARY BAKER: Under NSDD 38, the chief of mission (COM) controls the size, composition, and mandate of mission staffing. The Department of State has no deciding role; it advises the COM on the merits and implications of a proposed staffing change, and provides general guidance on staffing issues.

On specific cases, the Office of Management Policy (which NSDD 38 identifies as the Department's point of contact) solicits the views of appropriate State Department offices and forwards them to the COM by telegram. These telegrams are unique in that, unlike other State telegrams, they are not intended to present an official, unified Department position but rather to offer the full range of Department views. The COM is best served by having as much information as possible about a staffing request, and through this mechanism often receives contradictory recommendations from different offices within the Department.

The Department as a whole does not take a position for or against specific specific staffing proposals. The general guidance given to COMs charges them to use resources effectively and efficiently, and to relate them to priority policy and program objectives. It urges them to approve only staffing changes essential to the goals and workplan of the U.S. Mission, taking into account such factors as security, economy and political visibility.

The emphasis on controlling the size of the U.S. Government's presence overseas has not translated into significant position reductions. Although budget pressures have compelled some agencies to offset position increases in one location by abolishing positions elsewhere, we continue to see requests for new positions abroad, with many linked to important national priorities (e.g., narcotics control, international aviation security).

It is important to remember that NSDD 38 applies only to full-time, permanent, direct-hire U.S. and foreign national positions. It does not apply to contractors, and offers us no mechanism either to monitor or to control agencies' use of contractors as substitutes for regular U.S. Government employees. The possibility remains, therefore, that apparent cuts in position levels covered by NSDD 38 may not in fact reflect an actual reduction in the U.S. Government's presence overseas.

SENATOR HOLLINGS: The Under Secretary for Management stated in testimony that State needs to study the staffing by all agencies at overseas posts for reasons of security, diplomatic profile, and good management. What efforts are underway to do so? When will they be done? What, if any preliminary indications do you have on the anticipated outcome of this study? Are there too many U.S. employees abroad and why?

SECRETARY BAKER: We have developed a methodology for reviewing the staffing of overseas posts. This methodology is now being tested at some of our largest missions, and the results are very encouraging. Basically, what is involved is a comparison of the actual allocation of personnel resources against our goals and objectives for that mission. This is being done in a very thorough and objective way. The results of the study are provided to the chief of mission, who then uses them to make decisions on staffing under NSDD 38. The methodology is being further refined for use at other large missions, where the greatest savings can be effected. Subsequently we will conduct staffing reviews at our medium-sized and smaller embassies. We hope to institutionalize this process by early next year, so that COMs will review staffing, using this methodology, on a regular basis throughout their tenure. In this way the USG will be able to ensure that overseas staffing is truly limited to only that which is essential to the performance of priority policy objectives.

I do believe that there are too many U.S. Government positions overseas. The principal reason is that new positions are created to meet new requirements, but when these requirements cease to exist or are diminished, all too often corresponding reductions do not take place. That is why the kind of staffing review being developed now is needed on a periodic basis.

SENATOR HOLLINGS: A recent article stated that the Under Secretary for Management intends to reduce State's overseas presence by 5 to 10 percent. How is this going to be accomplished? In what countries/job categories? What is the timetable for accomplishing this reduction?

SECRETARY BAKER: The principal means of reducing our overseas presence would be the staffing reviews described in the answer to the preceding question. All countries would be involved, and reductions would occur as soon as is practical after the Chief of Mission's decisions are made.

SENATOR HOLLINGS: Please explain the requested increase in staffing at your three Regional Administrative Management Centers.

SECRETARY BAKER: The request does not represent an increase in staffing at the three Regional Administrative Management Centers. These positions are part of a base restoration related to 1990 problems with the Foreign Affairs Administrative Support (FAAS) System. The Department in this way seeks to ensure continuation of consolidated administrative support services vital to the overseas programs of other agencies. In order to minimize the disruption to all U.S. foreign affairs programs, the Department proposes to reassure total funding of these support costs on behalf of all other agencies. In FY 1991 we seek restoration of the same amount and number of positions reduced from our budget in FY 1990.

SENATOR HOLLINGS: In a December 1989 report on overseas financial management, the Inspector General recommended elimination or reprogramming of 12 overseas U.S. disbursing officer positions at an estimated savings of $2.2 million a year. What action has the Department taken or planned to take on this recommendation?

SECRETARY BAKER: The Department is developing a plan which will determine where and how our overseas disbursing and serviced post processing will be centralized.

SENATOR HOLLINGS: During hearings on the Department's 1990 budget, the Department said workload factors are used in determining the number of people it assigns to overseas posts. While we have seen references to the consular workload, could you please explain what workload measures are used to determine how many economic or political officers are needed at a post?

SECRETARY BAKER: It is true that the number of consular officers at any given post is determined largely by a fairly objective factor, namely the demand for various consular services. Political and economic workloads, however, are often a function of overseas events and developments which are considerably more difficult to predict than increases or decreases in visa applications or passport services. What has been happening in Eastern Europe since last autumn is an excellent example in this regard. The workload in that part of the world increased dramatically almost overnight, and because of developments like the increased access to individuals now possible in Eastern Europe we positively want this trend to continue.

In general, however, we rely on the judgment of our chiefs of mission, in cooperation with various offices in the Department, to determine what level and mix of staffing they need to do the job. There are resource constraints which limit our ability to be responsible to all the demands form the field, and we must therefore prioritize them here in Washington. No chief of mission can, of course, command resources in isolation from all of the other demands with which we must deal. Again the case of Eastern Europe provides an interesting example in that we have tried to meet the new demands in Eastern Europe by reprogramming existing resources from Western Europe.

USE OF CONSULTANTS

SENATOR HOLLINGS: State's FY 1991 budget requests almost $30 million for consultants and related experts. The request also notes that many of these individuals are retired U.S. government personnel. How many Retired Foreign Service employees are employed as consultants and at what cost? How many retired Civil Service employees are employed as consultants and at what cost? What is the distinction between a WAE (when actually employed) personnel appointment and a consultant?

SECRETARY BAKER: The number of retired government employees rehired as experts and consultants under appointment has been dropping. During a review in April 1990, Department records showed a total of 264 experts and consultants on the personnel rolls, most of whom were reemployed annuitants, at an annual cost of $3.6 million in salary. This was a classification review which has resulted in separation actions on 40 consultants/experts to date. As of May 1990, the rolls reflect a total of 221 experts and consultants on the rolls, 9 of whom are reemployed Civil Service annuitants with almost all of the remainder being reemployed Foreign Service annuitants. The approximate annual salary cost for these individuals is $2.9 million.

The term WAE (when actually employed) is a work schedule that indicates the individual has no regularly scheduled tour of duty. Such employees work intermittently and are therefore not eligible to earn or use leave. A person appointed to a consultant, expert, temporary, regular, or other type of position may be on a WAE work schedule.

A consultant is a person who serves primarily as an adviser to an officer or instrumentality of the Government, as distinguished from an employee who carries out the agency's duties and responsibilities. A consultant provides views or opinions and may develop solutions but does not perform or supervise the performance of operating functions.

FAAS

SENATOR HOLLINGS: For FY 1990, the Congress directed the State Department to expand the Foreign Affairs Administrative Support System (FAAS) to include additional administrative support functions in the reimbursements from other agencies. State's FY 1991 budget requests seeks to abandon these reimbursements and restore about $68 million to its own budget. Please explain your rationale for this reversal.

SECRETARY BAKER: Our proposal to rescind expansion of the FAAS system in 1991 is forced by the need to restore funding stability to the Department's world-wide administrative support infrastructure. That infrastructure provides administrative services vital to the people and programs of all U.S. agencies operating overseas. In FY 1990, however, the infrastructure's funding stability is threatened because AID and USIA are operating under legislative constraints which limit their reimbursements for State Department administrative support. These limitations generate an estimated $35 million funding shortfall to our support infrastructure. That shortfall is 5% of the estimated total costs of support and 29% of the amount anticipated as being reimbursable by other agencies.

Because our FY 1990 budget no longer contains the resources necessary to provide the expanded FAAS support to other agencies, we must meet the administrative support shortfall with funds planned for and vital to our substantive programs. These programs cannot continue to bear the support costs driven by other agencies nor can the Department continue to manage a world-wide system of reimbursable administrative support services rationally and credibly if other agencies are not positioned to fund their legitimate cost shares. Accordingly, while we remain committed to the principle of equitable burden sharing, we propose that the FY 1990 expansion of FAAS cost sharing be rescinded in 1991 until all key Congressional committees agree on agency funding responsibilities.

TRAVEL EXPENDITURES

SENATOR HOLLINGS: The Department is requesting $79 million for travel and transportation of persons in FY 1991.

In January 1990, the Inspector General (IG) reported on overseas allowances and benefits. This report criticized State's control over the setting of overseas per diem rates. The IG estimated that the government could save over $41 million annually by improving the per diem rate setting process. What per diem rates have been changed in response to this report? What is the status of changing other per diem rates? How much will the Department save as a result of these changes? How much should the Subcommittee reduce State's FY 1991 budget to reflect these savings?

SECRETARY BAKER: The Department establishes maximum travel per diem allowances for all Federal travelers at over 1,000 foreign locations. The IG audit examined 48 of the more important locations and we promptly reduced half of those by significant amounts. The $41 million savings reported by the IG was for all Federal agencies and was based on the assumption that comparable reductions could be achieved for all foreign locations. As a result of the IG inspection, all of our missions since April 1989 have been required to keep hotel reservation logs to substantiate the need for any per diem allowance increases. Each travel rate is reviewed for price changes at least once each year and numerous per diem rates are revised each month to reflect new cost information or currency exchange rate changes. Travel per diem allowances are directly affected by hotel charges which continue to increase worldwide. Rates are also affected by unpredictable changes in the value of the U.S. dollar abroad. While substantial allowance reductions were accomplished for locations such as London, Paris and Tokyo, both inflation and exchange rate changes have necessitated increases for numerous other important travel locations. Even with increased vigilance in setting allowance rates, the average worldwide travel per diem allowance level has increased from $102 in September 1988, when the IG audit began, to $110 in March 1990. With steadily rising travel costs, any reduction in our FY 1991 budget would seriously affect our ability to perform travel essential to the Department.

SENATOR HOLLINGS: In 1988 GAO made several recommendations to the Secretary of State concerning the Department's management of its travel advances. In April 1989 hearings, a State official indicated that improvements GAO recommended in the management of State's travel advance funds would be made, including referring delinquent advance accounts to collection agencies, credit rating bureaus, and to the IRS. Have these actions been taken? How many delinquent accounts have been referred to these organizations? How much has been recovered as a result of these efforts?

SECRETARY BAKER: We have taken actions, as we said we would, to improve our management of travel advances. We have since referred 34 delinquent advance accounts to collection agencies and recovered approximately 4% of the $28,673.

We have just completed arrangements which will allow us to use the credit rating bureau. We plan to begin using the credit rating bureau in FY-1991.

For the Tax Year, 1989, as of the end of April, 1990 we have we have collected $151,503 through the IRS Offset Program.

The level of outstanding travel advances has declined significantly since the end of FY 1987. As of September 30, 1987, there were $20.6 million in outstanding travel advances, of which $15.4 million were overdue. As of March 31, 1990, travel advances had declined to $6.2 million, of which $3.5 million were overdue. We will continue to closely monitor the efforts we have started to ensure that the Department's outstanding travel advances are kept at a minimum level.

SENATOR HOLLINGS: GAO reported that about $800,000 in travel advances were charged to 80 different invalid organizational funding codes. As a result, State could not record these advances in the proper accounts. To what extent have those transactions now been posted to their proper accounts? Have these funds been properly accounted for at this time?

SECRETARY BAKER: The Department has identified several advances which were previously recorded to invalid organizational codes and have taken action to record these transactions. This is a continuing exercise and as invalid transactions are identified, action will be taken to correctly record all transactions. As of April 30, 1990 we estimate that there are still transactions in approximately 50 invalid organizational funding codes.

INTERNATIONAL JOINT COMMISSION

SENATOR HOLLINGS: Focusing on the extent to which the International Joint Commission's (IJC) recommendation's have been implemented, in 1989 GAO reported that the U.S. government had not implemented many of the 56 recommendations made by the IJC. U.S. and Canadian government officials often did not advise the IJC in writing concerning the actions being taken or planned on its recommendations.

The IJC was established as part of the Boundary Waters Treaty of 1909 which stipulated that its general commitment is to cooperatively protect all shared waters along the two countries' border and address other issues of mutual concern. The U.S. budget request for its participation in the IJC for FY 1991 is about $3.6 million.

What is the purpose of having the IJC if its recommendations are not being implemented? Couldn't the $3.6 million budgeted for the IJC be put to better use? What unique functions does the IJC perform that the Environmental Protection Agency, established in 1970, or some other agency could not perform? Could IJC's role be limited to only those unique functions and at what savings? Has the IJC outlived its usefulness?

SECRETARY BAKER: Actually a reading of the GAO report shows that two-thirds of the recommendations made by the Commission since 1982 have in fact been implemented by the United States Government. The extent to which the remaining one-third of the recommendations have not been implemented and the reasons for same are to be supplied by the State Department to the International Joint Commission. The undertaking to respond in writing regarding the reasons for the lack of implementation on one-third of the recommendations was contained in the State Department response to the GAO report.

Your question of what unique functions are performed by the Commission relates not only to the Great Lakes Water Quality Agreement, but many other joint U.S./Canada environmental issues as well. With regard to the Water Quality Agreement, the U.S. and Canada, by way of their respective agencies, are to implement its provisions. The governments have concluded that evaluation of their progress should not be undertaken by the same agencies that are responsible for implementation, and therefore have asked the Commission to assume, among other things, an evaluation role. In short, having the Commission become an evaluator makes it possible to credibly separate the roles of implementor and evaluator. There appears to be no other institution which could effectively serve the evaluative role. We would note that much of the work leading to the Agreement was done by the Commission.

The Commission's responsibilities other than water quality of the Great Lakes include 23 work areas involving water quality, water quantity and air quality issues, from Maine and New Brunswick in the East, to Washington State and British Columbia in the West. A number of issues which were not initially resolvable by governmental negotiation were subsequently successfully resolved by governmental references to the Commission.

ACQUISITION AND MAINTENANCE OF BUILDINGS

SENATOR HOLLINGS: What procedures does State follow in setting priorities for allocating repair/maintenance funds?

SECRETARY BAKER: The Department of State allocates maintenance and repair (M&R) funds in two categories: Routine and Special. Each fiscal year, routine M&R funds are allotted to posts abroad, based on the previous year's allocation and a review of the post's Field Budget submission. Additional funds are allotted to cover inflation factors and we also take into consideration any non-recurred funds. These monies are for routine upkeep of government-owned and long-term leased properties, e.g. periodic painting, preventative maintenance and relatively minor electrical and plumbing repairs.

Special M&R funds are provided for non-routine projects which must be more thoroughly planned. Major projects such as replacement of a roof, restoration of a building facade, or upgrading major electrical or mechanical systems fall into the special category, as do any unforeseen major repairs due to earthquakes, storms or the like.

Priorities are established, and constantly updated, by review of Field Budget submissions, cabled requests and visits by FBO personnel. Also the on-going initiative of post-condition surveys, of which we have accomplished 57 to date, provide firm data on actual maintenance needs at the posts and the degree of effort required to have them resolved. As a matter of policy, fire and Life Safety projects are at the top of the list. Numerous other factors also must be considered, such as projects affecting employee morale at hardship posts, host country requirements for maintaining historic landmarks or meeting local ordinances and codes and evaluations by our professional staff of engineers, architects, etc. Security concerns also play a role in setting priorities and unforeseen emergencies can alter the priority order of project funding and completion.

The demand for M&R resources always exceeds the funding that is available. Each proposal submitted by a post is weighed against the total funding available and hard choices must often be made. Our aging facilities worldwide are in desperate need of major renovation but many of the major system replacements we wish to undertake must be delayed due to lack of funds.

SENATOR HOLLINGS: To what extent have or will the changes that have taken place in Eastern Europe affect the Diplomatic Security Construction Program?

SECRETARY BAKER: It is premature to conclude that the security threat is abating because of the recent changes in Eastern Europe. The Department will continue to prioritize Diplomatic Security construction projects based on post-specific threat levels and other construction requirements at these sites. We are currently reviewing our construction requirements in Eastern Europe to determine whether reprogrammings will be necessary to fund site acquisition and design of chanceries in several locations (such as Budapest and Sofia).

SENATOR HOLLINGS: Both the Office of Management and Budget and the General Accounting Office have ranked the Office of Foreign Building Operations' overseas programs as vulnerable to fraud, waste and abuse. What is State doing to improve its internal controls over this program?

SECRETARY BAKER: The Department has taken seriously recommendations from the GAO and our Inspector General regarding a number of responsibilities vested in the Office of Foreign Buildings Operations. Under the Federal Managers' Financial Integrity Act, the Department identified the rehabilitation and maintenance of real property overseas and the controls governing the management of the overseas housing program as material weakness of the Department.

In both cases, we have taken a number of progressive actions. With respect to maintenance and rehabilitation, the Office of Foreign Buildings Operations is conducting worldwide surveys to identify backlogs and to develop cost estimates for total rehabilitation, upgrading, and repair requirements; preparing for long-term requirements plan to address priority building maintenance needs; establishing two maintenance assistance centers to support the posts; initiating a facility manager program for new office buildings; and developing maintenance staffing plans to meet post specific requirements. Regarding overseas housing, we are engaged in an active effort to strengthen both policies and standards for application on an inter-agency basis.

MAINTENANCE

SENATOR HOLLINGS: An FBO official in May 1988 reported that the 14-story Consulate General Building in Rio de Janeiro, valued at over $30 million, was in shabby condition due to long term maintenance neglect. About $8 million is now needed to rehabilitate it.

(A) Who, in your opinion, should be held responsible for the neglect of this facility.

SECRETARY BAKER: The condition of the building is the result of lack of maintenance over many years beginning in the early sixties with the moving of the Embassy to Brasilia. We simply did not have adequate maintenance staff there. We have taken positive steps to preclude this from happening again at other locations. One example of this is the recent formation of the Washington Maintenance Assistance Center staffed with technical personnel who assist post staff and more closely monitor the condition of our buildings. Their efforts are largely responsible for our decision to retain the Rio de Janeiro Consulate Building.

(B) FBO had planned to rehabilitate this building, but now believes it should be replaced. Is it more cost effective to lease new office space in Rio or renovate this U.S. government-owned building? Please provide your analysis of the options.

SECRETARY BAKER: We have decided to retain the Rio Consulate building. An analysis of the alternatives indicates that in present value dollars, the most economical course for the USG to follow is to continue rehabilitation of the existing Consulate building. Analysis of the rental cost of new office space, alterations and security costs, less the amount to be realized from the sale of the present COB, revealed that the cost advantage of remaining in the current facilities is $16,309,000, computed over a 30-year time period. Earlier estimates of $8-9 million for rehabilitation of this property were the result of recommendations that we gut the building and rehab all offices, HVAC, mechanical and electrical systems. FBO maintenance personnel working with local staff have already completed much of the work anticipated in earlier estimates. Furthermore, some of the work is now considered unnecessary in the near term. The cost of the remaining work is estimated at $1.4 to 2 million and is being scheduled for completion over a three year period.

SENATOR HOLLINGS: Consulting engineering firms, under contract to FBO, are making a condition survey of U.S. government owned properties to determine maintenance backlogs. What are the preliminary results and cost estimates? How many posts have serious routine maintenance deficiencies? Provide a list of the 10 worst buildings. What are the main reasons for the maintenance and repair backlog and what does FBO plan to do to fix the problems?

SECRETARY BAKER: Based upon a statistical projection of the first 30 posts surveyed and substantiated by the next 27, the backlog for facility rehabilitation was estimated to be approximately $450 million if accomplished during the next five-year period.

Most of the posts surveyed have serious maintenance deficiencies in terms of their electrical systems, mechanical systems, roofs or general improvements.

The current list of the ten worst facilities in terms of major maintenance needs is as follows:

1.	Colombo	Old Chancery Building rehab.
2.	Islamabad	OBC structural
3.	Kinshasa	Total post rehab.
4.	Leningrad	COB rehab.
5.	Brazzaville	Total post rehab.
6.	Vienna	OBC facade
7.	Brussels	OBC/EMR/DCR rehab.
8.	Paris	Office buildings and apartment rehab.
9.	Prague	EMR facade and plumbing
10.	Santo Domingo	OBC/COB/EMR rehab.

The Global Maintenance Survey Program is an increasingly important tool for establishing our priority projects listing. Since the program is not complete, the Global Maintenance Survey Program will identify more requirements at other posts and the list will undoubtedly change.

Due to a shortfall in funds in previous fiscal years, many of the repair projects were not accomplished by the posts. Many of the repairs are beyond the scope of the routine maintenance program funds and the repair projects are non-recurring in nature. They will be accomplished either using special maintenance and repair, minor improvement, or Facility Rehabilitation and Support System Program funds.

On a long-term basis, the Department has initiated a professional Facility Management program with on-site managers at New Office Buildings and has established a group of Washington-based Facility Managers to provide support, training and guidance to these field personnel. I believe this effort will better protect the government's capital investment.

To provide additional support to the posts, FBO has recently established two Maintenance Assistance Centers in Belgium and Washington to provide a pool of cleared US personnel to perform critical repairs overseas.

SENATOR HOLLINGS: Can FBO identify property costs and amounts spent on individual buildings, If not, what can FBO do to develop such a capability. If FBO is given increased funding for maintenance what controls will FBO provide to make sure funds sent to posts to maintain buildings are used as intend.

SECRETARY BAKER: The Department is currently installing state of the art financial management systems in support of our domestic and overseas activities. These systems are being designed to provide more information about construction projects and major maintenance expenditures to central Department management officials which will enhance oversight capabilities. We also have plans to improve the Office of Foreign Buildings management controls by initiating on-site program and financial audits of the overseas posts facility operations.

U.S.I.A. OFFICE BUILDING CALCUTTA

SENATOR HOLLINGS: What is the current cost and what will be the date of occupancy for this property compared with the original cost and date of completion?

SECRETARY BAKER: The Current Working Estimate (CWE) is $10,500,000 for the Construction contract, Government Furnished Equipment (GFE) and Project Supervision. This project was initiated in FY 1985 with appropriation of excess Indian Rupees which is the equivalent of USD 8,750,000. Because the project was funded in rupees, no US firms bid on the project and the contract was awarded to Ansal Properties & Industries Ltd, an Indian firm, in September 1985. The original completion date was October 1987. However, in 1986, the project was delayed because of excavation problems related to the diaphragm walls designed to protect adjacent properties. The engineering solution and implementation took several months. Additional delays occurred because of redesign of the granite facade support systems and other changes. The project is currently 90 percent complete and is projected to be finished in November 1990. We have fully obligated the $8,750,000 in dollar equivalents of rupees and applied additional funding through reprogramming to the project for materials that had to be procured in the US.

SENATOR HOLLINGS: GAO reported that the FBO technical engineers involved in this project wanted to terminate the contract with the Indian contractor because of his inability to build the diaphragm walls which hold the soil back during the construction of the foundation. However, FBO management decided to keep the contractor contrary to the advice of FBO technical personnel. Why did FBO management make this decision? How much more costly to the U.S. government, is this project compared with the original contract price submitted by the contractor?

SECRETARY BAKER: The decision to retain the contractor was based on determinations by technical and engineering experts, that in the context of the Indian construction market, the contractor was technically competent to implement the design solution and complete the project in an acceptable manner. A change in contractors would not have produced a more competent contractor but would only have delayed the project. The original contract price was $6,300,000 and the current contract amount is $8,400,000. Note that of the $2,100,000 increase, $1,150,000 is attributable to the redesign of the diaphragm walls and consequent delays. The remainder, $950,000 is attributable to redesign of the granite facade support system and other miscellaneous changes.

HOUSING STANDARDS

SENATOR HOLLINGS: GAO reviewed the proposed new overseas housing standards and concluded that they will escalate the government's housing costs. The 1979 standards were developed by architects who were aware of space needs. These standards provided housing comparable to that which State employees occupy in Washington which they select as their personal residences. However, GAO found that State did not always enforce these housing standards. Even if the new larger standard are accepted there is no guarantee that they will be enforced. How does FBO propose to enforce and control these new standards, if accepted, since they did not or could not control the abuse of the current standards?

SECRETARY BAKER: The original space standards were based on a 1977 private study of new housing under construction in large development projects in the Washington metropolitan area. The objective of this study, commissioned by the Metropolitan Washington Council of Governments, was to gather information on the sales prices and marketing characteristics (size and type of construction) for housing in the Washington area. This study was used as it contained the only available data which linked square footage with the number of bedrooms; unfortunately, it had no correlation to family size or income level. We do not believe that this study necessarily represented "average" size housing in the context of our overseas housing program.

It is correct that the objective of this interagency policy is to provide housing which is comparable to what employees would occupy in the Washington area, with certain adjustments for more difficult environments. The proposed housing standards developed by the Department were designed to more adequately address this comparability objective by establishing standards based on rank (income) and family size. The GAO questioned the methodology and findings of this proposal and, concurrent with their recommendation, the Department initiated a survey of housing occupied by Foreign and Civil Service employees in this area. New standards, based on the results of this survey, will be presented to interested Congressional committees this summer.

On the enforcement of housing standards, the Department has implemented several new procedures which will substantially improve our oversight capabilities. Beginning in October, 1989, Chiefs of Mission are required to certify annually that all housing has been acquired and assigned in accordance with all Department policies and procedures; initial responses clearly indicate that Chiefs of Mission are taking this responsibility seriously. We have expanded the automated real estate management systems (REMS) to include additional information which will allow Washington managers to monitor post compliance with the housing policy. We are scrutinizing more closely all requests for waivers to space standards and cost limitations ($25,000 per year), requiring posts to fully justify and document their requests. Finally, the new housing policy itself is an integral part of improved enforcement capabilities. A new measuring system will standardize the approach to measuring among all posts, ensuring consistent application of the standards. Also, establishment of space authorizations based solely on rank and family size will facilitate and improve post management of the housing program.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

APPROPRIATION REQUEST VS. AUTHORIZATION

SENATOR RUDMAN: The Administration is requesting funding in several appropriations accounts in excess of the authorized amounts for fiscal year 1991. The unauthorized increases include $23.3 million for the non-security activities of the salaries and expenses account; $360 million for the Foreign Buildings Office3, primarily for the Moscow Embassy project; and $475 million for international organizations, primarily for the payment of arrearages. I'm not at all certain whether all these needs can be met, given the budget constraints we are facing. Aside from that, should Senator Hollings and I assume the Department does not want these funds appropriated until an authorization is enacted? If together we decide to attempt to appropriate a portion of these funds, what commitment can you give us that we'll receive the active support of the Administration?

SECRETARY BAKER: The Department wants the President's request appropriated even if there is no authorization. We intend to work with the Authorizers to get a bill, but if such a bill cannot be passed in a timely manner, we hope that the Congress would do everything possible to ensure that our shared foreign policy interests will be fulfilled.

POSSIBLE BUDGET SUMMIT

SENATOR RUDMAN: Last year the Appropriations Committee operated under a Budget Summit agreement which fenced the international affairs programs under budget function 150. As you know, the budget summit agreement was lower than the President's budget request for function 150.

Although the Administration and the Congress agreed on aggregate funding levels for international affairs programs, we were unsuccessful in our repeated attempts to receive guidance from the Department on the appropriate levels of funding for foreign aid and the operations of the State Department under the terms of the budget summit agreement.

I'm not certain if a budget agreement will be reached for 1991, or if it will include a separate cap for international affairs programs. However, if it does, will the Department be prepared to indicate its priorities under the reduced funding levels that are likely?

SECRETARY BAKER: Senator, I hope we've made a convincing case for the President's entire request, and that the Budget Resolution and 302b allocations will to the extent possible reflect the priorities which we have indicated in testimony and documents relating to our request. If a budget agreement is reached, we will of course look forward to working with you and this committee to try to achieve the best result possible.

KUWAIT EMBASSY SITE ACQUISITION

CONGRESSMAN RUDMAN: Recently the Subcommittee received a reprogramming request of $32.5 million for a new chancery compound in Kuwait. Originally the Congress appropriated $35.8 million for a new embassy in Kuwait; the reprogramming would use most of these funds just for site acquisition costs.

This is by far the most expensive site acquisition ever proposed by the Department. The most expensive site prior to this was Caracas, where we spent $12.8 million for 25 acres. The proposal for Kuwait would provide us with 14.4 acres of sand.

What is the reason for the enormous cost of this site? Are there alternatives available to us, such as reducing the size of our operations in Kuwait?

SECRETARY BAKER: The price of the Kuwait site is a function of market forces in Kuwait. Property in the Jabriya area (location of the site) is currently selling at the equivalent of $500 to $643 per square meter. This site is amenable to development with full availability of utilities. The negotiated purchase price for outright ownership is $553 per square meter. This market value range of prices has been substantiated by two appraisals prepared for the Department in February and March of 1990.

This per square meter price is less than that of all the other acceptable sites reviewed. The owner of the highest-rated backup site was asking a price of $714 per square meter. The number two backup site cost $1218 per square meter -- more than double the price per square meter of Jabriya, and provided only a 50 year lease term. The owners of the current compound, a site less than half the size of the Jabriya site, demanded $2,000,000 per year for a 25-year lease, with 5 to 10 years paid in advance and ownership of all buildings the USG constructs reverting to them at the end of the 25-year term. They also refused to sell fee simple title.

Because the Kuwait program, due to its security requirements, calls for the construction of a chancery, Marine Security Guard Quarters and Ambassador's residence, the minimum site requirement in Kuwait is 10 acres. No other site of this size existed. Further, a full site selection team consisting of all Department and other agency disciplines inspected 15 properties in Kuwait as potential sites. This is the only site that met all requirements. I'm sure you recall that the entire security construction program began as a result of the truck bombing of the Kuwait embassy, with resultant loss of life, in 1983. Because of this threat level, it is imperative we locate the Ambassador's residence and Marine Security Guard Quarters on the compound.

Since foreign owners are not allowed to acquire more that one acre of land without special permission, and since we will exhaust our special permission with the acquisition of the NOB site, this is our only opportunity to acquire land that can be used for residential construction. We currently own no property in Kuwait. We anticipate using the remaining 4+ acres of the site to construct up to 36 staff apartments, at an annual rental savings of approximately $1,000,000 per year.

We urgently need new secure facilities at this high threat post. If we do not make a decision now, we are facing the possibility of not having an acceptable site when our lease expires in 1996, and/or may be forced to a much higher site cost in a market that is rapidly escalating.

INTERNATIONAL ORGANIZATIONS

SENATOR RUDMAN: The Administration is requesting nearly $1.16 billion for international organizations for fiscal year 1991, and $247.4 million for peacekeeping operations. Even if you assume repeal of Section 614, this is almost a doubling of the funds available in 1990.

A large portion of the request is to pay arrearages that have accumulated over the years. The administration proposes to pay these arrearages over a five-year period at 20% per year. Despite this intention, the Congressional Budget Office is estimating outlays of almost 100% in the first year. Obviously, that constrains our ability to respond to your request.

For what purposes will the arrearages be used? Will the United States have some influence on the use of these funds, if they are provided?

SECRETARY BAKER: The payment of arrearages will go toward activities that are mutually acceptable to the United States and the international organization concerned. Account would have to be taken of the financial regulations of the respective organizations which, in some cases, would require that a portion of the payment go toward replenishment of depleted reserves (e.g., Working Capital Fund). In all cases, and before any arrearage payments are made, we would consult with the respective organizations and consider carefully all activities on which agreement can be reached. In such consultations we will assure that U.S. arrearages are not passed on to other members in the form of reduced assessments.

TELECOMMUNICATIONS POLICY

SENATOR RUDMAN: Mr. Secretary, I understand that, in 1985, when the U.S. government authorized private international satellite systems to compete with the Intelsat system, it imposed certain service restrictions on these separate systems. They cannot carry any service directly or indirectly connected with the public switched network (PSN) which is used primarily for public telephone traffic.

The effect of this blanket extraterritorial restriction prevents a separate system from providing any service to countries like Germany in which data and facsimile services are routed over the PSN. Doesn't the U.S. PSN restriction prevent U.S. separate systems from providing the very services that the government wanted to open to competition under the separate systems policy? Doesn't the effect of this restriction dictate how service can be carried in a foreign country, such as Germany? Is this appropriate?

SECRETARY BAKER: The public-switched-network (PSN) interconnection restriction on private international satellite systems is intended to avoid diversion of telephone and telex traffic from the International Telecommunications Satellite Organization, and to maintain INTELSAT's ability to provide global interconnectivity with all countries at economical rates. In formal consultations with INTELSAT, the United States undertook to prohibit U.S.-licensed systems from interconnecting with the PSN. This undertaking was encouraged by most of INTELSAT's more than one hundred member-countries, including the Federal Republic of Germany. Subsequently, Germany formally associated with the U.S.-INTELSAT consultation, undertaking for itself the interconnection restriction.

The first operational private U.S. system, Pan American Satellite, has successfully arranged to carry a variety of competitive services to nations throughout Latin America and Europe. Unfortunately, the details of implementation of the restriction reflect the complex nature of telecommunications today. It appears there may be some misunderstanding by Germany as to the scope, basis and purpose of the U.S. interconnection restriction. We intend to discuss this matter with them to clear up any misunderstandings.

As far as the effect of the restriction in foreign countries is concerned, it was intended to apply on both the domestic and foreign end of the satellite circuit. To have it apply on only one end would be to seriously erode its value in avoiding diversion from INTELSAT. In implementing the restriction, the Federal Communications Commission has merely established the conditions under which a U.S. licensee will be permitted to carry communications to and from the United States. Such assertion of authority is no less appropriate than expecting any U.S. corporation to comply with U.S. law and treaty obligations in its dealings overseas.

STATEMENT OF HON. DAVID N. DINKINS

[Clerk's Note.—Subsequent to the hearing the subcommittee received testimony from the Honorable David N. Dinkins, mayor of New York, NY, with regard to reimbursement for police protection of diplomats. By direction of the chairman the statement has been printed in the record.

[The statement follows:]

Statement of Mayor David N. Dinkins

Mr. Chairman, members of the subcommittee, thank you for allowing me to testify on this most important issue for New York City—the policy of providing Federal reimbursement to localities to cover the costs of protecting foreign dignitaries.

Before I begin, let me tell you that I have recently appointed Paul O'Dwyer as commissioner of the New York City Commission for the United Nations and Consular Corps. Mr. O'Dwyer, a former New York City council president, will be the city's official liaison between the diplomatic community and the mayor's office. This commission is dedicated to ensuring that New York City maintains its fine reputation as host-city to the many world organizations which call New York their "home away from home". I can think of no one else who can accomplish this goal better than Paul O'Dwyer.

I am here today to speak about two separate diplomatic police protection reimbursement programs administered by the Department of State: one for United Nations dignitaries and missions, authorized by Public Law 94-196, and the other for consular officials, authorized by Public Law 98-164.

When one considers the level of police security needed to cover all the 32,000 foreign officials and members of their families who represent 159 United Nations missions and 88 foreign countries, it is easy to understand why protection reimbursement is so vital to the city of New York.

New York does not ask and has never asked to be reimbursed for routine police services which are provided to all New Yorkers, including crime prevention, safety patrols, emergency aid, and criminal investigation. We provide these basic services to anyone with no questions asked, even though we receive no offsetting revenues from foreign officials in the form of income, sales, and property tax, not to mention fines from parking violations and other legal judgments.

"Extraordinary protection", as opposed to routine service, is necessary for specific diplomats and foreign properties who may be the object of threats or possible terrorist activity. Local police provide them with the proper security so that they may live and work in a safe and unhampered environment.

The threat of international terrorism in New York City is heightened by the number of foreign diplomats concentrated in this one location. This, coupled with the fact that extraordinary protection exceeds the boundaries of routine police activity, warrants the policy of Federal reimbursement to localities for fulfilling a Federal responsibility based on mutual and reciprocal international agreements.

When former President Gerald Ford signed the first dignitary protection law, Public Law 94-196, $3.5 billion was authorized annually to reimburse localities for protection of foreign dignitaries visiting the United Nations. It was with the enactment of Public Law 94-196 that protection of foreign officials was truly acknowledged as a Federal responsibility. A senate report on the law clearly stated: "local communities should no longer be forced to bear the full cost of what is essentially a national obligation."

Congress moved to increase the annual level for U.N. police protection to its current level of $7 million in order to more accurately reflect the annual cost of extraordinary protection. Since 1982, there have been no further adjustments in that amount to reflect inflation as well as substantial increases in personnel and equipment costs.

In addition to the public law which was just discussed, there is Public Law 98-164, which was authorized in Federal fiscal year 1984 and provides reimbursement for the protection of foreign consulate officials. Although $6 million was authorized, in 1986 and in subsequent years, only $2.1 million was appropriated for this purpose. Like United Nations dignitaries, foreign consular officials are also in need of extraordinary protection, because of their highly visible role in representing their countries.

Before the creation of the consular protection reimbursement program, the city absorbed approximately $800,000 per year in consular protection costs. Relief from this burden was welcomed.

The mission and consular protection programs have provided us with resources which have made it much easier for local police to successfully ward off serious terrorist actions against the diplomatic community in New York. The New York City Police Department has established a nearly perfect record in protecting heads of state, members of royalty, Popes and countless diplomats and their families.

The combined appropriation for the United Nations dignitary/mission protection and consular protection programs is presently $9.1 million. In the past, this has proved sufficient, but for Federal fiscal year 1990 and beyond, this amount does not reflect the increased cost of such protection.

Personnel and equipment costs incurred over the last three years have been raised by nearly 17 percent. And major unanticipated visits, such as the December 1988 visit by Mikhail Gorbachev, cost over $2.5 million by itself. For the first three quarters of Federal fiscal year 1989, the city has placed claims under the U.N. mission program in excess of $7.6 million. The fourth quarter claim, which is to be submitted shortly, will exceed $1.5 million, thereby pushing the fiscal year 1989 claims over $9 million, exceeding the $7 million available. Projected first quarter claims for fiscal year 1990 are approximately $2 million with the second quarter projected at slightly higher. The events in Eastern Europe have led to many demonstrations in the city in U.N. missions.

Since the city is already exhausting each year's available funds at the lower rate, it becomes readily apparent that the $7 million for U.N. dignitary protection and the $2.1 million for consular protection will be insufficient to satisfy future claims.

In providing quality diplomatic protection, the New York City Police Department serves all Americans, and at considerably less expense that it would cost the Federal Government to do so itself. Nearly eight years ago, the Treasury Department testified before Congress that if the Federal Government were to physically provide this protection, as it does in Washington, it would cost $20.1 million in the first year alone, with an annual cost of $14.5 million thereafter.

In light of those figures, the $7 million authorization for this purpose each year since 1983 proves quite cost effective for the country, having saved the Federal Treasury some $65.6 million. Even with a 17-percent increase, the numbers would still be far less than the Treasury Department's projected figures if the protection were provided by the Federal Government.

Providing adequate and quality police security for New York City's diplomatic community is a costly venture, but surely much less costly than the implications which inadequate protection would pose. Recognizing this, as well as the ever-present threat of international terrorism, the city of New York supports an increase in funding for the U.N. and for the consular protection programs. Merely to keep pace with the 1986 level, an increase is necessary.

I urge you to enact any necessary increased funding levels for these worthy programs and I want you to know that the city of New York thanks you for the past support your committee has provided.

Thank you very much.

SUBCOMMITTEE RECESS

Senator HOLLINGS. Very well, we will go into executive session. Ladies and gentlemen, if you don't mind clearing the room, so we can go into classified information about arms control.

[Whereupon, at 11:40 a.m., Wednesday, April 25, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 26.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1991

THURSDAY, APRIL 26, 1990

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:04 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Adams, Rudman, and Stevens.

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

STATEMENT OF DICK THORNBURGH, ATTORNEY GENERAL

ACCOMPANIED BY:

- J. MICHAEL QUINLAN, DIRECTOR, BUREAU OF PRISONS
- GENE McNARY, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE
- K. MICHAEL MOORE, DIRECTOR, U.S. MARSHALS SERVICE
- CLIFFORD J. WHITE III, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS
- MICHAEL J. ROPER, DEPUTY ASSISTANT ATTORNEY GENERAL, CONTROLLER

INTRODUCTION OF ASSOCIATES

Senator HOLLINGS. This morning, the subcommittee will take up the 1991 request of the Department of Justice. The Department is requesting a total of $8,970,594,000. This represents an increase of $364 million or a 4.2-percent increase over fiscal year 1990.

Actually, when we delete the amount for prisons, we have an overall increase of about $500 million in drug-related accounts.

Appearing on behalf of the Department is our Attorney General, Dick Thornburgh. Also we have with us this morning Mike Quinlan, Director of the Federal Prison System; Gene McNary, Commissioner of the Immigration and Naturalization Service; Mike Moore, Director of the U.S. Marshals Service; and Cliff White, with the Office of Justice Programs.

I yield to you.

Senator RUDMAN. I am glad to welcome the Attorney General and I am interested in hearing his statement. I look forward to, hopefully, a hearing where we can exchange some information.

PREPARED STATEMENT

Senator HOLLINGS. Very good. General, we welcome you, sir, and we will include your statement in its entirety in the record, and you can present it or highlight it as you wish.

[The statement follows:]

STATEMENT OF DICK THORNBURGH

Mr. Chairman and Members of the Committee:

Thank you for giving me this opportunity to present the Department's 1991 request and to express my sincere appreciation for your own tenacious efforts in support of objectives that closely coincided with the President's 1990 request.

Today, in addressing the Department's budget issues, let me try to draw together the various strands of the budget into salient themes. Because this Subcommittee has worked so closely with the Department over the years, you know full well that in many ways the work of this Department is related to the defense of our national values, the strength of our Constitution and legal system, and to staying abreast of developments in a rapidly changing world.

I have said repeatedly that the war on drugs must ultimately be won on the battlefield of values. While we may not be able to change the values of most drug traffickers, we are beginning to make some progress in the schools and in the neighborhoods. Our communities are organizing to work together, and high school drug use is at its lowest level in years. However, the battlefield of values is not limited to drugs. The ethical values and morality expressed in some of the nation's corporate board-rooms and the offices of Federal, State, and local government officials also require attention. Greed, corruption, and abuse of the public trust threaten the vitality of whole cities and industries. Some of the biggest thieves in the history of America wear pin-striped suits, speak the King's English, and are graduates of the finest schools this country has to offer.

White collar crime takes many forms -- insider trading, fraud, public corruption, environmental offenses. Currently, we are deeply involved in addressing financial institution and defense contractor fraud, HUD-related cases, public integrity matters, security and commodity trading practices, and environmental crime. Unfortunately, despite our best efforts, the crimes already committed in these areas will be an enormous burden to the American taxpayer and the nation's economic well-being for years and years to come. The Department's budget request includes additional resources to address these problems, as well as the other areas discussed below.

DRUG ABUSE TRENDS

Drug abuse is the most serious problem facing the nation. In a Washington Post - ABC News poll last August, 44% ranked drugs as the country's most serious problem. Among the nation's black citizens, almost 70% gave this answer. This attitude was shared by 60% of all teenagers. This may help explain why the national survey of drug abuse among high school seniors, conducted by the Alcohol, Drug Abuse, and Mental Health Administration, shows drug use at its lowest level since the survey began in 1975. There has been a steady downward trend in the experimentation and use of marijuana. The sharp rise in awareness concerning the dangers of cocaine and crack, its highly addictive smokeable form, has also contributed to the decline in its use. In fact, almost all measures of drug use in the high school survey have been downward. Similar trends are shown in college surveys. These results are encouraging because those who graduate from high school and college are more likely to become our future leaders and establish patterns of acceptable behavior.

Although the trends for high school and college students are moving in the right direction, those who regularly use drugs remain in danger. Of continuing concern is the intensive drug use among those who drop out of school and the high proportion of those who are arrested that test positive for the use of one or more drugs. Here we face a more intractable problem involving the use of law enforcement resources, one which I will discuss shortly in more detail.

The melding of diverse trends in the drug area may help explain the rather static situation in the overall crime statistics area. Preliminary Uniform Crime Report statistics for

1989, which provide information on the number of crimes that are reported to the police, showed a 5% increase in reported violent crimes from 1988, and an overall 3% increase in reported crimes. However, the National Crime Survey (NCS), which provides a measure of crime by surveying a representative sample of the general population, indicates that the incidence of violent crime has not changed significantly in recent years. More generally, since the peak year of 1981, NCS figures show a decrease of about 13% in the total annual number of crimes against individuals and households. Still, about one quarter of the households in the United States are victimized by violence or theft each year.

DEPARTMENT OF JUSTICE AUTHORIZATION ACT AND BUDGET REQUEST

As you know, the last authorization bill to be enacted for the Department of Justice was for the 1980 fiscal year. The authorities contained in that Act, however, have been continued by the Appropriations Committees in annual appropriations acts. The Appropriations Committees have also updated certain of these authorities, including the undercover authorities for the Federal Bureau of Investigation and the Drug Enforcement Administration. This year the President's budget specifically requests that these important undercover authorities be continued in the Department's appropriation.

The Department's proposed authorization bills have, in the past, served two purposes. The first has been to assure the necessary authorization, as required by Section 204 of the Crime Control Act of 1976, for each of the Department's appropriations. The second has been to provide the financial management authority, such as undercover authority, that are necessary for the daily operation of the Department. This year, the Department has submitted two separate bills to Congress to achieve these two purposes.

The Department's proposed appropriations authorization bill was submitted in late February. It requests the authorization of 19 Department appropriations in accordance with the funding levels requested in the President's budget. The second bill, which we submitted on April 2, requests permanent codification of the various financial management authorities that the Department has been seeking for several years.

We hope that separating our requests will facilitate the Congress' consideration of the important issues raised by each of these legislative initiatives.

The Department's budget request for 1991 extends the blueprint for federal law enforcement proposed in 1990. Last year, before the President submitted his last two budget amendments, I was here supporting a request for $7.1 billion. Following the transmittal of all of the President's amendments, Congressional action, and sequestration, the 1990 amount increased to $8.6 billion. In 1991, the estimate approaches $9 billion. All of these amounts, I might note, are far above the $6.7 billion in budget authority we had in 1989.

Fortunately, the Committees on Appropriations are not required to address the full $9 billion estimate. The Civil Liberties Public Education Fund, which was addressed last year in the 1990 appropriations, will pay out $500 million to persons of Japanese ancestry who were relocated in World War II. Another $272 million in permanent indefinite budget authority for the Asset Forfeiture Fund represents primarily the distribution of asset equity to innocent owners and equitable sharing with state and local law enforcement agencies. Three self-financing funds of the Immigration and Naturalization Service total another $238 million. In addition, the $125 million Crime Victims Fund is self-financed. After subtracting these items and the Independent Counsel estimate, requests requiring positive action by the Committees on Appropriations total $7.812 billion. This is $127 million less than the $7.939 billion provided in 1990.

Before any conclusions are reached that this is a "no growth" budget, I must emphasize that one simple adjustment converts a declining budget to one of substantial growth. In 1990, the "Buildings and Facilities" account of the Federal

Prison System received $1.397 billion in budget authority to begin construction on new prison facilities. In 1991, the request for this account is $374 million. By subtracting these amounts from the appropriation totals, the remaining appropriations grow from $6.542 billion to $7.438 billion, a healthy increase of $896 million or 13.7%.

NATIONAL DRUG CONTROL STRATEGY

On September 5, 1989, the President released the Administration's first National Drug Control Strategy, as required by the Anti-Drug Abuse Act of 1988. In his transmittal letter, he said that "America's fight against epidemic illegal drug use cannot be won on any single front alone; it must be waged everywhere -- at every level of Federal, State, and local government and by every citizen in every community across the country." In January, 1990, the second National Drug Control Strategy report was released. This report noted that the goals of the strategy are "ambitious but straight-forward: to restore order and security to American neighborhoods, to dismantle drug trafficking organizations, to help people break the habit of drug use, and to prevent those who have never used drugs from starting." The despair, waste and degradation seen on many fronts were balanced in part by what Bill Bennett has described as, " -- sometimes astonishing signs, often heartening signs -- of hope."

It is difficult to quantify why we have reason for hope. Efforts to publicize the drug problem have had a positive effect. Settling on a strategy that attacks both the demand for and supply of drugs is clearly a necessity. In operational terms this requires a well-balanced criminal justice system; drug treatment programs; prevention activities in our schools, businesses, and communities; international efforts aimed at countries that produce and process drugs; and sound interdiction strategies as well as strong research, intelligence and statistical systems.

International developments and domestic enforcement actions illustrate how our strategy is taking shape. Cooperation between nations reached a summit in December 1988 when I went to Vienna to sign, on behalf of the United States, a United Nations Convention Against Illicit Narcotic Drugs and Psychotropic Substances -- a convention signed by more than 80 countries that has some real law enforcement teeth. The Senate ratified this Convention last November.

While the general level of cooperation among nations was improving, the grim battle between the Colombian government and the Medellin and Cali drug cartels reached a crisis. Between 1981 and the summer of 1989, almost 200 judges and seven members of the Colombian Supreme Court had been killed. Then, on August 18, Luis Carlos Galan, a leading presidential candidate, was assassinated. This event led President Virgilio Barco to announce open war on Colombian drug barons and to reach agreement with the United States on a list of Colombians who, if captured, would be extradited to the United States. In September, President Bush felt the drug issue was so critica that he made a prime time appeal to the American people. This address, linked with the first National Drug Control Strategy, announced a massive assistance program for the three Andean nations most deeply involved in the production and processing of cocaine -- Colombia, Bolivia and Peru. A major purge of Colombia's police was followed by the arrest of Jose Raphael Abello, the fourth ranking member of the Medellin cartel. The more violent demise of another Medellin kingpin, Jose Rodriguez Gacha, and the surrender of Panama's Manuel Noreiga require no explanation. The recent visit of President Bush to the Drug Summit in Cartegena, Colombia is America's clear signal that it will actively assist other nations involved in the war on drugs.

The drama of the Panama action and the Colombian drug war is unmatched anywhere in the world. Bolivia, a major cocaine producer, has used its troops to carry out crop and laboratory eradication programs. In mid-December, Bolivia deported a former

Interior Minister, Luis Arce Gomez, to Miami to face cocaine trafficking charges. In Mexico, a number of persons were sentenced for the murder of DEA agent Enrique Camarena. Peru, the major exporter of raw cocaine, struggles with the help of the United States merely to retain some Governmental presence in its vast Huallaga Valley where only weeks ago the major anti-drug base at Santa Luis was directly assaulted. Meanwhile, there are large areas in Asia where opium is grown with impunity and readily converted into heroin for worldwide distribution. Our recent indictment of Burma drug-warlord Khun Sa is a step toward ending the Southeast Asia supply of drugs.

Money laundering, a business necessity for any major illegal drug operation, has suffered severe setbacks with the collapse of the Noreiga regime and a dramatic change in the banking practices of several European nations. Recent prosecutions include BCCI in the C-Chase Operation and Banco de Occidente of Panama in Operation Polar Cap.

Despite the substantial tribulations of the cocaine cartels, the drugs keep flowing. Interdiction efforts force the traffickers into innovative and expensive cat and mouse games, but it must be devastating for at least some traffickers to lose 21 metric tons of cocaine in an unguarded Los Angeles warehouse. Later, firefighters in New York found another five metric tons hidden in shipping containers beneath a layer of highly toxic lye. Then in Texas, there was the seizure of another nine tons. This was all accomplished during a six week period in October and November 1989.

Although crack cocaine is the most serious drug abuse problem now facing us, we must be aware of other problems. Heroin, marijuana, methamphetamine and its smokeable derivative "ice" cause many serious health and crime problems. Ice, like cocaine, can often stimulate violent, psychotic behavior. At present, this product is largely confined to Hawaii, but the situation could change rapidly because ice is produced easily from domestic methamphetamine.

RECENT INTERNATIONAL DEVELOPMENTS

A few weeks ago, the World Ministerial Summit to Reduce Demand on Drugs and Combat the Cocaine Threat met in London to stimulate efforts to combat illegal drugs. Officials from 112 nations attended. Legalization of drug use and possession was decisively rejected. Concrete measures to fight drug use were discussed extensively.

Then, just last week, I had the opportunity to participate in a conference sponsored by the Organization of American States in Ixtapa, Mexico to discuss illicit drug use and production. President Salinas assured the assembled ministers that Mexico's renewed commitment to the drug war would be maintained. I was proud that the United States could report thwarting the export of essential chemicals and tightening the noose on those who use the international monetary exchange system to further drug trafficking. Other nations noted their own efforts. As I testify today before this Committee, the 8th International Drug Enforcement Conference is meeting in Mexico to devise new strategies to further international cooperation.

Before returning to the specifics of the Department's budget, I would like to reiterate what President Barco said in London and which I later conveyed to the ministers gathered in Ixtapa, Mexico. He said "The fight against drugs will be only won when we have succeeded in penetrating the hearts, minds, and habits of the consumers of cocaine, opium, heroin, and other lethal drugs." It is a statement on values that must be heeded by all nations as drug traffickers move to broaden their markets.

ROLE OF DEPARTMENT OF JUSTICE IN DRUG WAR

The portion of the Department's resources devoted to the war on drugs is steadily increasing. Out of our total appropriations request of $7.8 billion under the Committee's consideration for 1991, approximately $3.6 billion, or about 45%, is attributable to anti-drug abuse activities. This includes the full $700 million request for the Drug Enforcement Administration, the entire $330 million request for the recently consolidated Organized Crime Drug Enforcement activities, and all amounts associated with the Asset Forfeiture Fund. The Federal Prison System has the largest absolute portion for any component of the Department, an amount that exceeds $1 billion. The increased Anti-Drug Abuse grant programs account for almost all of the $526 million requested for the Office of Justice Programs. Substantial contributions are also being made by the Federal Bureau of Investigation, the Immigration and Naturalization Service, the U.S. Attorneys, the Marshals Service, and by several components within the General Legal Activities appropriation.

Most components involved with the drug war have specific, interrelated tasks. Investigators from the Drug Enforcement Administration, the Federal Bureau of Investigation and other investigative agencies bring their cases to the U.S. Attorneys for prosecution. When an arrest is made, the person charged may be placed under the custody of the Marshals Service who must secure space in a local jail or some other detention facility. If a guilty plea is entered or a trial is conducted, a sentence is decided upon and confinement in Federal Prison System is likely. The elements of the Federal justice system described above are strongly interwoven with our efforts at international narcotics control, drug interdiction, and the gathering and dissemination of intelligence. The Department also participates in a variety of demand reduction activities. The drug related research, development, evaluation and assistance efforts of the Office of Justice Programs differ somewhat from other Federal law enforcement programs, but are carefully coordinated to address the needs of the criminal justice system. The Anti-Drug Abuse grant program assists law enforcement operational efforts by promoting street level techniques that have proven effective.

I will summarize some of the Department's 1991 initiatives related to drug control by component.

DRUG ENFORCEMENT ADMINISTRATION

For 1991, the Drug Enforcement Administration is requesting an appropriation of $700 million, an increase of $151.3 million over the amount made available in 1990. This will provide more agents and support personnel to support both domestic and foreign operations.

The largest portion of the increase, 413 positions and $38.7 million will be directed at enhancing domestic enforcement efforts in 15 major drug importation and distribution centers. Fully funding the Special Enforcement Operations Program established in 1990 to target and immobilize major trafficking organizations will require an additional 37 positions and $3.7 million. An additional 22 positions and $4.9 million will be provided to the Foreign Cooperative Investigations Program to expand 13 existing overseas offices and open a new office in Argentina. Another $10 million will go to assist State and local governments in marijuana eradication activities. Also, 45 positions and $8.8 million will be provided for nine State and Local Task Forces.

As these front-line activities expand, there is a critical need to provide adequate support for them. Clearly, training, intelligence specialists, and laboratory services are needed to support the increased number of agents. Those who have visited the El Paso Intelligence Center have been impressed with its efficiency, but this effort must be complemented by more direct operational support from intelligence specialists operating out of DEA's many field offices. Increased funding for radios, research, aircraft purchase and maintenance, and the relocation of DEA's airwing facility are important if we are to adequately support an ever more sophisticated war on drugs. Finally resources to implement the Chemical Diversion and Trafficking Act of 1988 are essential if we are to keep drugs of therapeutic value in legitimate channels.

The budget justifications address these requests in more detail but the efficiency of the Drug Enforcement Administration is as much dictated by the balance between programs as by absolute funding levels.

ORGANIZED CRIME DRUG ENFORCEMENT

One of the most successful efforts of the Government in fighting the war on drugs is found in the work of the Organized Crime Drug Enforcement Task Forces. Although Title I of the Anti-Drug Abuse Act of 1988 dictated that the Task Forces should be funded from a single appropriation, the Task Forces themselves date back to October 14, 1982, when President Reagan came to the Great Hall of the Department of Justice to announce his initiative to draw on the diverse skills of many agencies that dealt with the growing involvement of organized crime in illegal drug activities. The proposal received a hearty endorsement from the Senate and the Congress provided a single appropriation to support the Task Forces in both 1983 and 1984. Beginning in 1985, the Task Forces were funded by direct agency appropriations.

Each of the current 13 Task Force regions is headed by a U.S. Attorney who may draw on the skills of the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, the Marshals Service, the Internal Revenue Service, the Customs Service, the Bureau of Alcohol, Tobacco, and Firearms, the Coast Guard, and the Criminal and Tax Divisions of the Department of Justice.

With the additional $115 million requested in 1991, the Task Forces will undertake additional undercover operations, apply more agents to track aliens involved in drug trafficking, provide additional personnel to work on money laundering and financial crimes linked to drug trafficking, expand firearms investigations, provide more officers to capture narcotic fugitives, and bolster the number of attorneys prosecuting cases.

I would like to emphasize that cases must pass detailed scrutiny by all of the participating agencies before they are designated as Task Force cases. By their nature, the activities being investigated are long-term, high-level, complex, and require multiple investigative skills. The increase requested is linked with the designation of more and more cases.

ASSETS FORFEITURE FUND

A key account linked to the national drug control effort is the Assets Forfeiture Fund. The idea of using the proceeds of illegal drug transactions to combat drug trafficking goes back a number of years, but implementation of a system to effectively accomplish this goal has been difficult. Our established program is popular and increasingly effective, as we continue to improve its management and operations.

In 1991, we estimate receipts of $500 million. Payments from the Fund are estimated at $372 million, of which $100 million would involve program-related expenses under the control of the Committees on Appropriations. At the present time we estimate that $128 million will be deposited to the Special Forfeiture Fund for use by the Director of the Office of National Drug Control Policy.

FEDERAL BUREAU OF INVESTIGATION

The budget request for the Federal Bureau of Investigation totals $1.64 billion in 1991, an increase of $141 million over the amount available in 1990.

Before proceeding to discuss the major items in the budget request, I must take a moment to discuss a problem that held up the delivery of our budget documentation. As you know, both houses of Congress passed a bill on November 13, 1989 changing the basis for paying administratively uncontrollable overtime. The President signed this bill, which became Public Law 101-173, on November 27, 1989. This cost, of course, had not figured in our original budget request for 1991, but since it became law we had to make the necessary adjustments. In all our law enforcement components, there are substantial increases in overtime costs, but the largest cost occurs in the FBI because it has the most agents and a larger proportion of its agents are in the higher grades where the cost increases are greater. Without an increase in our total allowance, the cost had to be absorbed somewhere. After the President released his budget, we concluded that 559 FBI agent positions and workyears simply could not be sacrificed to pay for these increased overtime costs. Some other solution had to be found. It took a while to work this out, but I think we have found a reasonable solution for the FBI and the two other major law enforcement components involved.

The budget justifications you have received avoid the sharp agent reductions announced in our January 29, 1990 Press Release.

The modified budget request focuses new resources for the same initiatives previously addressed. Instead of filling new positions midway through the fiscal year they would tend to be filled only in the last quarter. In the war against drugs, an additional 333 positions and $19 million will be used to enhance field investigations and provide the associated investigative support, undercover operations and make informant payments. For ferreting out the growing threat of Asian organized crime an additional 172 positions and $4 million is needed. Other high priority field investigative activities would receive 205 additional positions and equipment for an additional $35.5 million. The largest single increase focuses on white-collar crime where 440 positions and $12.4 million will be used to augment the current program. The additional resources will be applied against defense procurement fraud, bank fraud and embezzlement, fraud by wire, and abuse of the bankruptcy statutes. Smaller, but still significant increases are proposed for training, forensic services, computer support, technical field support and equipment, and records management. Many of the new initiatives will be funded by offsetting reductions in a variety of other functions and by resources freed-up from non-recurring, one-time expenses.

IMMIGRATION AND NATURALIZATION SERVICE

For the Immigration and Naturalization Service, the 1991 "Salaries and expenses" budget of $884 million is $42 million higher than the $842 million provided in 1990.

Enhancements for the Border Patrol total 200 positions and $16.3 million. Conversion of temporary immigration inspector positions to permanent positions increases the number of permanent positions by 104 at a cost of $1.3 million.

Construction proposals totalling $17.2 million will permit the expansion and security upgrading of the Krome, Florida Processing Center, allow construction to begin on a large border checkpoint at San Clemente, California, fully fund two new border patrol stations on the Southern border and add two additional checkpoints at Marathon and Alpine, Texas.

An increase of $8.4 million is needed to purchase additional vehicles.

These increases are largely offset by decreases in personnel and the transfer of $13.1 million in data processing and communication costs from appropriated funds to the Immigration Examinations Fee account where they more properly belong.

LEGAL ACTIVITIES

The litigation and other legal work in the Department is conducted by the staff supported from three salaries and expenses appropriations -- U.S. Attorneys, General Legal Activities and the Antitrust Division. The Fees and Expenses of Witnesses appropriation provides the resources necessary to pay expenses for witnesses who appear on behalf of the Government. In its capacity as the Nation's law firm, the Department helps to offset the cost of litigation by collecting criminal fines and debts owed to the United States. In FY 1989, our front-line ltigation activities costs totaled $734 million; while debt and fine collections totaled $733.4 million. For a non-profit organization, the return on investment was nearly dollar for dollar, an accomplishment worthy of note. We expect to return the requested increases in our litigating appropriations to the Treasury and more, because cash collections are a priority within this Department.

U.S. ATTORNEYS

The U.S. Attorneys are the front line of our legal arsenal. In each of the 94 judicial districts, they prosecute criminal offenses, represent the Government in civil actions, and initiate proceedings to collect fines, penalties, and forfeitures. Combatting financial institution fraud became a prime issue in 1990, but, in terms of overall impact, it was the President's June 27, 1989 amendments to combat violent crime that really lifted the horizons for the U.S. Attorneys. These amendments included a request for 1,600 positions and 800 workyears. In 1991, the budget request focuses on funding most of the newly authorized positions for the full year. The 1991 request of $628 million includes $72 million for this purpose. In addition, the budget request includes the transfer of 186 positions and $13.6 million from the Criminal Division to the U.S. Attorneys, a change associated with the Organized Crime Strike Forces. The remainder of the net increase of $109 million requested for the U.S. Attorneys is accounted for by mandatory increases and other cost adjustments.

GENERAL LEGAL ACTIVITIES

The various legal divisions and other components funded from the General Legal Activities appropriation were provided 3,570 positions and $295 million in 1990. After the transfer out of 186 positions and $13.6 million from the Criminal Division and other base change adjustments, the continuation of the 1990 program into 1991 would require 3,342 positions and $310.1 million. The request for 1991, however, includes a number of new initiatives that bring our requirements up to 3,538 positions and $338.5 million.

Additional funds are included in the budget for office automation and automated litigation support. These continuing initiatives will enable the Department to more effectively compete with law firms hired to challenge Government interests.

FINANCIAL INSTITUTIONS FRAUD

Last year, you may remember, the Department undertook a major initiative to uncover financial institutions fraud. Fifty additional positions were requested for the Criminal and Tax Divisions to initiate financial institution fraud cases. Including the work of the United States Attorneys and the Federal Bureau of Investigation, we applied almost $50 million to this program. In 1991, the work of the Tax Division will be expanded, and the Civil Division will be involved more heavily in financial institution fraud cases. The Civil Division pursues cases to uphold the new regulatory structure for financial institutions and secure the Government's assets in bank failures, requiring the infusion of 60 positions and $1.3 million for automated litigation support.

Armed with this appropriation, the Department will be able to increase the number of FBI agents and Assistant U.S. Attorneys to deal with approximately 8,000 pending bank fraud cases nationwide.

Our offensive will be built around the model of the Department's Dallas Fraud Task Force, which has thus far secured 49 convictions and over $14 million in fines and court-ordered restitution since 1987. Key victories during 1989 include the convictions of top officials of Vernon Savings and Loan including a 30-year sentence imposed this month in its former Chief Executive Officer. Overall, in 1989 the Dallas Task Force undertook 36 prosecutions, securing 22 convictions to date and with only two acquittals.

SECURITIES FRAUD

Savings and loan cases are only one area in which we are aggressively pursuing fraud. As the Committee is well aware, the

Department has undertaking a major effort to uncover and prosecute securities and commodities fraud. The Department has created a Securities and Commodities Fraud Task Forces in the United States Attorneys Offices in Chicago, Los Angeles, San Francisco, Kansas City, Denver, Manhattan, Philadelphia and Salt Lake City.

We have successfully prosecuted 15 persons on charges of illegal floor trading at the Chicago Board of Trade and the Chicago Mercantile Exchange.

Our largest single victory was the guilty plea of Drexel-Burnham Lambert Inc. to a host of violations. The plea agreement includes more than $650 million in fines and penalties as a result of the Department's most massive investigation into securities fraud.

Just this week we secured the guilty plea of Michael Milken to six felony counts, including conspiracy, mail fraud, securities fraud and tax fraud. The plea agreement requires Milken to pay $200 million in criminal fines and penalties. In addition, Milken will pay $400 million into a special restitution fund for civil claimants.

Paul A. Bilzerian, former Chairman of the Singer Company, was sentenced to four years imprisonment and fined $1.5 million for securities fraud. Robert M. Freeman of Goldman, Sachs and Co. pleaded guilty to mail fraud in an insider trading scheme and was sentenced to four months in prison and fined $1 million. The Department is firmly committed to ensuring that investors will be protected from fraudulent trading activities.

DEFENSE FRAUD, ILL-WIND AND UNCOVER

The Department has thus far obtained 36 convictions and more than $15 million in assessed fines and related recoveries as a result of the ongoing Ill-Wind probe. These cases included:

- Hazeltine Corporation: for the conversion of government property, making false statements, wire fraud, and conspiracy to defraud the U.S.;

- Teledyne Industries, Inc.: for wire fraud, filing false statements, conspiracy to defraud the U.S., and conspiracy to bribe a public official;
- Employees of Unisys Corporation: for conspiracy to commit bribery, filing false statements, filing false claims, income tax evasion, conspiracy to defraud the Federal Election Commission, theft and conversion of government property; and
- Whittaker Command and Control Systems: for conspiracy to defraud the U.S., bribery, and interstate travel in aid of racketeering.

Defense fraud is not limited to Ill-Wind.

In a related case, the Department conducted an exhaustive criminal investigation which resulted in the entrance of the Boeing Corporation into a $13 million civil settlement to resolve allegations of defective pricing by Boeing Military Airplanes.

In Operation Uncover, since last November, the Department has secured guilty pleas from some of the largest Defense contractors -- Boeing Co., Hughes Aircraft Co., RCA Corp., Grumman Corp. and Raytheon Co. -- in connection with the unathorized acquisition of classified Department of Defense internal budgeting and planning documents. We have indicted and convicted a number of employees of these companies. Together these companies have paid $14.8 million in criminal fines and civil penalties and the employees have been sentenced to prison terms.

HUD FRAUD

Since 1985, the Department has obtained nearly 600 convictions with almost $23 million in fines, recoveries and restitutions relating to fraud in programs under the Department of Housing and Urban Development (HUD). In 1989 alone, the Department secured over 140 convictions.

HUD fraud cases are being given a top priority in our prosecutorial policies and the Department has established a HUD

Fraud and Corruption Coordinating Group within the Criminal Division to monitor the development and disposition of HUD investigations nationwide.

The most notorious case involved Maryland escrow agent Marilyn Louise Harrell, whom, we alleged, stole over $6 million. "Robin HUD" -- because of her purported use of the funds to help the poor -- pled guilty to embezzlement, claims to have only stolen $4.7 million. We are still attempting to determine the exact amount of the fraud, but have recovered substantial amounts of cash and property.

The Department also has prosecuted and convicted former HUD Deputy Assistant Secretary DeBois Guilliam on charges of receiving illegal gratuities in connection with HUD grants that he approved. In addition, Reba Louise Lovell, a HUD contract closing agent in Texas pled guilty to embezzling federal funds after converting $2.5 million from the sale of HUD-owned residential properties to her own use.

THE ENVIRONMENT

The air we breathe, the water we drink and the land we must preserve to nurture us, must all be protected from environmental profiteers and waste. Environmental protection is therefore a very high priority for the Department.

We are in the midst of pursuing major criminal investigations into possible violations of the nation's environmental laws at the Rocky Flats Weapons Plant near Denver, Colorado, and, of course, we have indicted Exxon for the massive oil spill off the coast of Alaska in Prince William Sound by the Exxon Valdez. Shell Oil Company and Ashland Oil Company have each paid substantial fines for oil spills on the nations waterways. In the last year, criminal enforcement activity increased 70% in pleas, and convictions and Superfund settlements reached a record $1.02 billion.

Under the Clean Water Act, the government filed civil and administrative actions against 61 cities for failure to "pretreat" toxic discharges into their municipal sewage systems.

The demand for a better environment and the mandate to enforce new statutes has resulted in a request of $9 million more for the Land and Natural Resources Division. This increase includes 47 positions and $2.3 million to address the increasingly complex nature of environmental litigation, as well as an increase of $4.3 million for the Division's automated litigation support activities.

CIVIL RIGHTS

The work of the Civil Rights Division is also expanding. Last year we wrestled with establishing an Office of Redress Administration so that the Department could make payments to 60,000 or more persons of Japanese ancestry interned during World War II. In the 1991 budget, the focus of the Division shifts more toward the enforcement of voting laws and the implementation of the Fair Housing Act Amendments of 1988.

The Department of Justice will vigorously enforce the nation's civil rights laws and will seek to remove existing barriers to equal opportunity, with a special emphasis on those who seek to use violence and intimidation toward particular racial, religious, and ethnic groups. Unless and until all Americans' civil rights are safe, no American's civil rights are safe.

The Civil Rights Division had its most successful year yet in terms of criminal prosecutions. The Division investigated over 3,000 matters in 1989. The Department prosecuted a record number of prosecutions of racial violence, or so-called "hate crimes." We are also pleased to note that the Congress has passed, and the President has signed, the Hate Crimes Statistics Act.

As a result of the Fair Housing Act Amendments, the Division has more than tripled its initiation of housing discrimination cases, with filings under every fair housing category, including discrimination based on family status (number of children) and disability. The Department is also committed to the "Americans with Disabilities Act," a bill already passed by the Senate, which seeks to provide the first comprehensive civil rights protection to individuals with disabilities.

CIVIL LITIGATION

The Civil Division continues to successfully defend the taxpayers from meritless claims against the Treasury. In 1989, over $21 billion in claims against the United States were defeated with only $123 million paid--less than six-tenths of one percent of the amount claimed. In affirmative litigation, judgments and settlements of $521 million were secured.

Included among the most notable victories in the often overlooked realm of civil litigation are:

- U.S. v. Daewoo Corp., a customs fraud case, settled by payment of $34 million to the United States -- the largest penalty ever paid in a customs fraud case -- as a result of uncovering a scheme to conceal the true prices of steel products so as to evade anti-dumping duties;
- Asbestos Litigation, in which case brought by seven industry giants for over $9.7 billion in claims were dismissed in the Claims Court;
- A record $32.7 million payment from 99 Japanese construction companies in settlement of bid-rigging charges on the construction of a U.S. Navy base in Yokosuka, Japan; and
- A settlement with LTV Corporation for their abuse of the federal-insured Student Loan Program secured $29 million for the federal treasury after nearly a decade of litigation.

The Civil Division -- overworked as it is -- succeeds at something most law firms can only dream of: returning $3.27 for every dollar spent. Much of the Civil Division's success remains unsung, but their work is vital to the fiscal integrity of the United States. For 1991, a program increase of 96 positions and $5.4 million is needed to safeguard this unprecedented record of success.

TAX DIVISION

I have already discussed the Tax Division's involvement in the War on Drugs and our efforts in financial institution litigation. In addition, the Tax Division is undertaking a more active role in bankruptcy cases to ensure that the interests of the United States as a tax creditor are fully protected. In one such case this year, Tax Division attorneys were instrumental in drafting, negotiating and obtaining Bankruptcy Court confirmation of reorganization plans of William Herbert Hunt and Nelson Bunker Hunt, the largest individual bankruptcies in history. Under these reorganizations of debt the Government immediately received $170 million and will receive an additional $165 million out of the Hunts' future income.

The Hunt cases illustrate the importance of having the Tax Division become involved early in the bankruptcy process. Documents filed in the Hunt cases indicate that the Government might have recovered only about a quarter of what it actually recovered had the Tax Division not invested, early on, enormous resources towards negotiating a plan of reorganization. The Department intends to continue investing in these types of cases and undertaking new initiatives to protect the Treasury.

ANTITRUST DIVISION

During the 1990 budget cycle, a major change was made in the way the Antitrust Division is financed. Instead of relying on appropriated funds, the Division may receive up to $20 million in receipts generated by a new provision in the 1990 appropriations act that sets a fee of $20,000 to accompany each premerger notification filing required by the Hart-Scott-Rodino Antitrust

Improvement Act of 1976. Fees are now being collected by the Federal Trade Commission and divided equally between the Commission and the Antitrust Division. Current trends in the collection of the fee indicate that filings are falling below anticipated levels. We are monitoring this situation very closely to address any possible shortfall. If the increase of $1.9 million in appropriated funding is approved, and receipts do not fall short of the estimate, the total resources for the Division in 1991 would exceed $53.7 million.

The 1991 request also includes proposed legislation that would have the Antitrust Division assume certain responsibilities now entrusted to the Interstate Commerce Commission relating to rail mergers. The cost of this function is almost $1.4 million.

FEES AND EXPENSES OF WITNESSES

Fees and expenses are paid to witnesses who appear on behalf of the Government in cases in which the United States is a party. The costs incurred by this appropriation are driven principally by the cost of paying expert and fact witnesses and the number of witnesses admitted to the Government's witness protection program. This appropriation also pays for mental competency examinations, private counsel to represent Government employees sued for actions taken while performing their official duties, and the compensation of victims for crimes committed by protected witnesses.

In 1991, the request for this appropriation is $70.6 million, an increase of $14.6 million over the 1990 adjusted appropriation. The bulk of the increase, $10.9 million, is to allow the Department's growing litigation staff to compete with well-funded opposing counsel for expert witness services. The increased cost of providing subsistence, housing, and medical services to protected witnesses is estimated at $3.3 million. The remainder of the increase is for private counsel.

U.S. TRUSTEES SYSTEM FUND

The Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986 provided for the nationwide expansion of a pilot program to administer bankruptcy cases that first became operational in 1980. Beginning in 1988, the program became totally self-financing, but under the enabling legislation all expenses of the Fund are charged to the allocation of the Committees on Appropriations.

The 1991 request of $65.7 million provides for 929 positions. The requested increase of $5.6 million over 1990 includes a program increase of $1 million which will provide more vigorous audit coverage of private trustees by contractors. The remainder of the increase is for mandatory adjustments.

UNITED STATES MARSHALS SERVICE

Like many other components of the Department, the increases requested for the Marshals Service in 1991 are heavily driven by the war on drugs. The entire Assets Forfeiture Fund and the cost of managing forfeited assets is linked with the drug problem. For the Salaries and Expenses and the Support of U.S. Prisoners appropriations it can be argued that no increases would be necessary if we felt that drug offenders were not dangerous and could be relied on to return for trial if released on bail. The wisdom of the Administration, the Judiciary, and the Congress tells us that drug traffickers and many drug users flaunt not only our general system of values but the legal system as well.

As a result, the $288.5 million requested for the Salaries and Expenses appropriation is 21.3% higher in 1991 than in 1990. Potential violence requires the Administration to request an additional 99 positions and $15.8 million to protect the courts, provide the staff necessary to manage an increase in the number of protected witnesses, and guarantee prisoner security in courthouses. An additional 49 positions and $13.3 million is needed to transport more prisoners to progressively more remote detention facilities. Managing the growing stock of seized assets requires another 134 positions and $6.2 million. The other big expense is linking the whole system together with the necessary automated data processing and communications, an expense that will increase by 23 positions and $6.2 million. There are other changes but these are the main thrust of the 1991 request.

SUPPORT OF UNITED STATES PRISONERS

One of the Department's most rapidly growing accounts is Support of United States Prisoners. For 1991, the request is $193 million, $34.6 million, or 21.8% over the 1990 funding level and a 75% increase over the 1989 level. The request includes $178 million for the Marshals Service to contract with State and local jails to detain Federal prisoners before and during their trials. The remaining $15 million will be used to expand or renovate detention facilities in exchange for guaranteed jail space for Federal prisoners at jails located near Federal courthouses. There appears to be no end in sight to the competing need for jail space by Federal, State, and local jurisdictions.

FEDERAL PRISON SYSTEM

The size of the Federal Prison System is dictated mainly by the number of prisoners. Last year, when I was before this Subcommittee there were about 46,800 prisoners in Federal institutions. Today, there are over 56,000. The projection for 1991 is 62,450 prisoners in 66 institutions. In addition, approximately 7,100 sentenced prisoners will be housed in contract facilities, principally Community Treatment Centers. Despite the infusion of about $1.5 billion in construction funds in 1990, we will still need substantial resources over the next several years to bring overcrowding to manageable levels.

Not too many years ago, I understand that it would have been fairly easy to enumerate new prison projects, report on the status of previously approved projects, and briefly describe when new facilities would be opened. Today, I must settle for telling you that we are requesting approximately $374 million to construct and modernize prison facilities. The plan includes one major, new 1,960 bed prison complex that incorporates a maximum security prison, a minimum security prison, and a prison camp in the Northeast Region. Another 1,700 beds would be obtained by the acquisition and conversion of surplus military facilities. Construction of seven detention facilities and the expansion of six existing facilities, together with the other projects described above, would provide an additional 6,175 beds. Within the Buildings and Facilities request, major renovations and repairs would be made to existing institutions.

New construction is essential to handle the increasing prison population, but in 1991 we must rely on the increased utilization of already authorized facilities. For immediate needs we must look to what we can do with our Salaries and Expenses appropriation. Here we seek 22,269 positions and $1.372 billion, an increase of 4,798 positions and $233 million. A large portion of the dollar increase is associated with mandatory cost adjustments, but significant new resources are planned in other areas. To expand staffing at existing, overcrowded institutions, an additional $91.6 million is needed to fill 4,000 new positions. The next major increase relates to activating new facilities. With $49.6 million and 883 positions, we plan to provide 3,315 additional beds at a large number of institutions. Providing food, medical supplies, clothing and other prisoner care services to an average daily population projected to increase from 56,400 inmates to 62,450 inmates in 1991 will cost another $25.5 million. Other changes relate to initiating electronic monitoring for low-risk inmates, financial management, and management productivity improvements.

OFFICE OF JUSTICE PROGRAMS

Today, as many State and local governments are overwhelmed with drug activity, the National Drug Control Strategy has responded by proposing the infusion of Federal funding. When President Bush took office, the 1990 budget request for the Office of Justice Programs stood at $96.3 million. During the 1990 budget cycle, both the Administration and the Congress pushed for significantly higher funding levels. The budget request you have before you for 1991 stands at $613.6 million, more than six times the initial 1990 request. Nearly 80% of this, or $490 million, is for the State and Local Narcotics Control and Justice Assistance Improvement grants authorized by the Anti-Drug Abuse Act of 1988.

Although the Anti-Drug Abuse program dominates the requested funding, the Administration continues to provide steadfast support for law enforcement research and statistical programs. In 1991, the National Institute of Justice is requesting $24.5 million including a program increase of $1.8 million to develop an effective less than lethal weapon. The Bureau of Justice Statistics request is for $23 million including program increases totalling over $1.9 million, the latter amount including the census of jail inmates.

The $8 million request for the Missing Children program doubles the amount provided in 1990. This increase is designed to allow State and local governments to enhance their response capability.

One segment of the Juvenile Justice program merits special support. Formula grants would be eliminated but $7.5 million would be designated to support the High Risk Youth program that addresses problems of gangs and drugs as they interact with the nation's juvenile justice system. Grantees would have to provide a 50% hard cash match.

The request also includes $9,750,000 in Federal funds to support the Regional Information Sharing System. The intent of the request is to maintain the program at the $13 million level on the condition that the Federal share in these projects not exceed 75%. Although the seven involved projects provide for the useful exchange of information, the beneficiaries are primarily State and local law enforcement agencies.

The Public Safety Officers' Benefits program achieved the status of independent appropriation funding in 1990. The $26.1 million request is slightly higher than the amount available in 1990 because benefits are linked to the Consumer Price Index.

GENERAL ADMINISTRATION

The $101 million request for the General Administration appropriation is only slightly above the $96.5 million provided in 1990. Mandatory increases of $6.7 million exceed the net increase of $4.6 million because of rather large savings in several areas.

As I announced last year, I intend to keep overhead costs down so that more resources can be allocated to front line activities. Bureaucratic layering has been reduced and I intend to continue to look for savings in the same way I did when I was Governor of Pennsylvania.

A few program increases, however, are necessary. Five positions and $580,000 in new resources are needed primarily to strengthen our ethics and equal employment opportunity efforts.

Finally, resources are required to consolidate the Department's major Washington area offices and to produce architectural and engineering plans to renovate the Main Justice and the Home Owners Loan Buildings. The consolidation program, which is designated as Facilities Program 2000, will be accomplished over a 10-year period. Planning for the renovation work is at an advanced stage. The 1991 funding request is for $970,000.

INSPECTOR GENERAL

Last year we asked for our first appropriation for the Office of Inspector General, which was established by the Inspector General Act Amendments of 1988. In October 1989, the Office transmitted its first Semiannual Report to the Congress.

During the time following its establishment on April 14, 1989, until the end of 1989, the Office relied on funds transferred from other appropriations. In 1990, it will have available $20.5 million in funds from its own appropriation and almost $2.4 million in reimbursements.

Bringing together some rather diverse functions from the Department's central Audit Staff, the Immigration and Naturalization Service, the Marshals Service, the Drug Enforcement Administration, and the Federal Prison System was not easy because the missions of the various components were very different and therefore difficult to integrate into a single organization working in 14 metropolitan areas. Inadequate funding to maintain existing functions required us to approach the Congress for the transfer of additional resources just to survive 1990.

As the first Inspector General assumes his duties, he will find a viable organization with four functional elements -- audit, investigations, inspections, and management and planning. He should be able to function well with a requested budget for 1991 of $28.4 million, an increase of 84 positions and $7.8 million over the resources provided in 1990.

Although the new Inspector General must determine his own priorities, the budget includes 50 positions for investigations, 20 positions for audit, and 14 positions for management and administration.

CONCLUSION

Except for the Community Relations Service and the National Institute of Corrections, both of which have small decreases proposed for 1991, I believe I have covered all the Department's activities that require the attention of the Committees on the Judiciary and Appropriations. Again, I would like to thank everyone who helped to deliver the Administration's 1990 appropriation request and I look forward to 1991 as a year in which the administration of justice will continue to rank as a high priority for the 101st Congress.

OPENING STATEMENT

Mr. **Thornburgh**. Thank you, Mr. Chairman, Senator Rudman. I will summarize the statement in full, which has been presented to the record.

Let me begin by telling you that I am pleased to appear today to present the Department of Justice's 1991 budget request. We appreciate the tenacious efforts of this committee on our behalf last year under your leadership, Mr. Chairman, and that of Senator Rudman, and we look forward to a continuing, productive relationship.

You have already sketched the particulars of our aggregate budget request which reflects a healthy increase over last year's figures—in particular, taking into account the extraordinary commitment for prison construction last year—which comes to about 13.7 percent when we factor out some of the special accounts.

In this world of finite resources, our goal is to keep overhead costs down so that more attention can be given to front-line needs. My full statement provides the nuts and bolts of the Department's budget justification, and I will, of course, be pleased to respond to particular questions you may have.

In my remarks this morning, however, let me try to draw together the various strands of our budget into some primary themes, many of which are apparent in the report I presented to the President earlier this month, a copy of which is before each of you. In many ways, the work of the Department of Justice is designed to reflect a restoration of our national values, the strength and integrity of our constitutional and legal system, and events in the rapidly changing world in which we live.

WAR ON DRUGS

Amidst the despair, waste, and degradation caused by drugs and violence, for example, I see some rays of hope that our policies will prevail. I have said repeatedly that the war on drugs must ultimately be won on the battlefield of values, not by law enforcement alone. So I am heartened by recent surveys indicating that citizens are taking drug abuse, and the violence and corruption that it engenders, much more seriously than in the recent past.

Surveys indicate that 44 percent of Americans rank drugs as the country's most serious problem. Significantly, nearly 70 percent of the Nation's African-Americans and 60 percent of our teenagers gave that answer. Our communities are now organizing, and high school drug use is at its lowest level in years.

The first national drug control strategy was released last September. The second report in January set forth goals that are, and I quote, "ambitious but straight-forward: To restore order and security to American neighborhoods, dismantle drug trafficking organizations, to help people break the habit of drug use, and to prevent those who have never used drugs from starting."

In operational terms, this strategy requires a well-balanced criminal justice system, drug treatment programs, prevention activities in our schools, businesses and communities, international efforts aimed at countries that produce and process drugs, and sound interdiction strategies as well as strong research, intelligence, and statistical systems.

International developments and domestic enforcement actions alike illustrate how our strategy is taking shape. Though the grim battle between the Colombian drug cartels and the Colombian Government continues, the valiant efforts of their president, Virgilio Barco, against the Colombian drug barons, supported by a significant U.S. assistance program for the Andean nations, has had a major effect.

Last Sunday's Washington Post noted in a front page story that the drug lords are now under siege. The recent visit of President Bush to the drug summit in Cartegena is a clear signal that America will actively assist other nations involved in the war on drugs.

Last week, I had the opportunity to consult with the leaders of the 32 nations composing the Organization of American States at Ixtapa, Mexico on fashioning cooperative efforts to deal with drug trafficking and money laundering.

I believe these discussions serve to further enhance our mutual interest in putting a stop to international drug cartels. Meanwhile, there are large areas in Asia where opium is grown with impunity and readily converted into heroin for worldwide distribution. Our recent indictment of Burma drug warlord Khun Sa, therefore, represents a major step toward ending the Southeast Asia supply of drugs.

Domestic interdiction efforts have also had some spectacular successes, but we remain vigilant in order to halt the volume of drugs that flows in undetected.

The portion of the Department's resources devoted to the war on drugs is steadily increasing. For 1991, it accounts for approximately 45 percent of our overall budget. On the enforcement side, this total includes not only the DEA, the organized crime drug enforcement task force activities, and the Asset Forfeiture Program, but significant portions of the resources of numerous other components of the Department: the FBI, the Criminal and Tax Divisions, the U.S. attorneys, the U.S. Marshals, the INS, and the Bureau of Prisons, among others. These components have specific interrelated tasks, and their efforts are closely interwoven in international narcotics control, drug interdiction, and the gathering and dissemination of intelligence.

I know, Senator Hollings, you have expressed concern about the level of the commitment in South Carolina, and I am pleased to take note of the fact that the number of prosecutors in the U.S. attorney's office has increased since I took office in August 1988 from 28 to 40, and most recently, the number of DEA agents has been increased from 13 to 15, with plans to open a new office in Florence. We hope to work together with State and local authorities to create the kind of network of law enforcement in your State that has characterized the most successful efforts that have been carried out.

With respect to reducing demand, we are seeking $490 million in State and local narcotics control and justice assistance improvement grants under the Anti-Drug Abuse Act of 1988. This figure is six times the entire budget request for the Office of Justice Programs when President Bush took office.

VIOLENT CRIME

As important as are the Department's efforts against drugs, they cannot overshadow the importance of our law enforcement efforts in a variety of other areas. The President's violent crime initiative last year laid out our enforcement strategy against violent crime, and with the cooperation of the Congress, the U.S. attorneys nationwide received a necessary shot in the arm with 1,600 new positions. We must continue that effort in 1991.

The organized crime strike forces have been reinvigorated by consolidation of their efforts with the U.S. attorneys in their areas and expansion of their focus to today's nontraditional forms of organized crime. We are also continuing aggressive efforts to counter terrorist activities and vigorously pursue extradition of terrorists apprehended abroad.

We had to make some tough choices for the FBI's budget this year in order to accommodate the budget impact of the overtime legislation signed last fall. We were determined to do it without sacrificing the 559 FBI agent positions that we initially feared would have to be sacrificed to pay for these increased costs. After a great deal of work, I think we have found a reasonable solution for the FBI and the two other major law enforcement components involved, solutions which preserve their ability to meet their commitments in the priority areas which the President has identified.

WHITE-COLLAR CRIME

One of these is white-collar crime, so-called crime in the suites. Some of the Nation's biggest thieves are seeking to undermine the integrity of important business, financial, and governmental institutions. Strangely, even today in the wake of Michael Milken's guilty plea, some are still wondering why such nonviolent illegal conduct warrants time in already overcrowded prisons.

This reaction is further proof that we need to change the values demonstrated in some corporate board rooms and in the offices of Federal, State, and local government officials across this country. Tougher sentences are being handed down in our courts. For example, on April 5, Woody F. Lemons, the chairman and chief executive officer of Vernon Savings & Loan in Texas, was sentenced to 30 years in prison, plus restitution, by a Federal judge in Dallas, the stiffest sentence ever given to a thrift executive in a fraud case. This case was a product of the comprehensive attack on savings and loan fraud which was announced last December.

We are deploying more than 400 additional prosecutors, FBI agents, and accounting personnel in 27 cities, applying the almost $50 million which you appropriated to this program. In 1991, we are seeking substantial additional resources for the FBI in this area. The work of the Tax Division will be expanded, and the Civil Division will be involved more heavily in bank fraud cases.

I am also working in unison with Secretary Kemp to aggressively pursue fraud and corruption by persons doing business with or employed by the Department of Housing and Urban Development. We are committed to digging out such cases, prosecuting them, and, where possible, bringing additional civil actions for restitution and damages. We simply cannot allow programs intended to assist low-

and moderate-income Americans to be exploited for illicit personal gain.

In addition, we are devoting substantial additional resources to other white-collar cases: public integrity investigations, defense contractor fraud, security and commodity trading practices, corporate crime in the antitrust and environmental areas, and cases involving corrupt public officials.

Unfortunately, crimes which have already been committed in these areas will remain a burden to the American taxpayer for years to come. These cases often are extremely complex, requiring detailed investigations and coordination of many different law enforcement efforts. These additional resources, however, will offer much-needed reinforcements to our ability to deter and punish those who have perpetrated fraud and corruption. It is essential that we convey a clear message that enforcement will be swift and punishment sure for those businesses and public officials who abuse the trust placed in them.

MONEY LAUNDERING

A related initiative is our continuing crackdown on money laundering. The Department has frozen and seized millions of dollars of drug-related profits, recently targeting over 700 accounts in 173 banks across the United States. In addition, we have not hesitated to prosecute foreign banks for their alleged involvement in international money laundering schemes. Examples include the recent prosecutions of BCCI in Operation C-Chase, and Banco de Occidente in Panama in Operation Polar Cap.

If we are to be effective, we must choke off access by the drug lords to legitimate banking systems, both at home and abroad, taking full advantage of the vast increase in cooperation we are getting from foreign governments and foreign banks.

ENVIRONMENTAL PROTECTION

As noted, the Department is also making major strides to beef up its enforcement efforts to protect the environment. Cases like the *Exxon Valdez* prosecution appropriately garnered considerable public attention, but the challenges facing what we have now renamed the Environment and Natural Resources Division, both criminal and civil, are never ending. We are redoubling our efforts to bring to justice the environmental profiteers who break our laws and foul our air, water, wetlands, and land for private gain. With the addition of 47 positions, this budget request represents a 65-percent increase over fiscal year 1989 budget authority, underscoring this President's continuing commitment to protecting the environment.

CIVIL RIGHTS ENFORCEMENT

The work of the Civil Right's Division is also expanding. Criminal civil rights enforcement actions against Skinheads and other hate groups are yielding successes. In 1989, the Division prosecuted more than twice the number of racial violence cases than in any prior year. Seventeen white supremacists Skinheads in Dallas recently were convicted for conspiring to violate the rights of Jewish, African-American, and Hispanic citizens. Since the Fair Housing Amendments Act of 1988 took effect last March, the Division has filed a total of 42 cases, more than twice the number of housing lawsuits brought during any previous fiscal year. We are also laying plans for vigorous enforcement of the Voting Rights Act during the redistricting process in the aftermath of the 1990 census.

ANTITRUST EFFORTS

The Antitrust Division is now affected by a major funding change achieved during the 1990 budget cycle. Premerger notification filings under the Hart-Scott-Rodino Antitrust Improvement Act now require a fee of $20,000 to be divided equally between the Federal Trade Commission and the Antitrust Division. We are concerned, however, that receipts may fall short of the $20 million estimate and are carefully monitoring the effect of this potential budget shortfall and the activities being taken in the Congress in response to that.

DEFENSE OF THE TREASURY

One of the frequently overlooked but extremely important aspects of the Department of Justice's work is our role as defender of the Treasury, protecting our tax dollars. For example, in fiscal year 1989, the Civil Division defended against over $21 billion in claims against the Treasury. Judgments totaled only $125 million, less than 1 percent of the amount demanded. The Tax Division success in defeating deductions for trading and commodity future straddles alone may have saved some $8 billion for the taxpayers. On the other side of the coin, the Civil Division won judgments totaling in excess of $500 million. The Tax Division recently collected $170 million from the *Hunt Brothers Bankruptcy* case and is aggressively pursuing other major tax cases.

Protection of funds belonging to the American people is an important element of our aggressive litigation strategy. We also hope the House will follow the Senate in establishing uniform debt collection procedures to enable us to expand our efforts, to track down those who owe money to the United States and, if necessary, to seize their assets.

Of interest to you, I believe, are some figures from 1989; we collected $733.4 million in criminal fines and debts by investing a total of $734 million in the Department's front-line litigation activities, a nearly dollar-for-dollar return. This is a substantial increase over previous years, and we can do even better than that as we focus our efforts on major, cost-effective criminal and civil litigation.

We are also seeking additional funding to meld the disparate parts of the new Office of Inspector General into an effective tool to combat mismanagement and impropriety within the Department. This reflects our continuing commitment to ensuring the highest ethical standards in the Department.

PRISON NEEDS

With respect to all of the Department of Justice's criminal law enforcement efforts, the last key link in the chain is the Federal Prison System. Last year, when I came before this subcommittee, there were about 46,800 prisoners in Federal institutions. Today, there are approximately 55,000, and the projection for 1991 is for a total of 62,450 prisoners in 66 institutions. The Bureau of Prisons inmate population has increased by about 30,000 inmates, or roughly 125 percent since 1981, an unprecedented rate of growth. Forty-nine percent of the current inmates are drug offenders, compared to 25 percent in 1981. Despite the infusion of about $1.5 billion in construction funds in 1990, we still expect to be unable to achieve our long-range target of 30 percent overcrowding in 1995.

New construction takes time and is essential to handle the increasing prison population, and in 1991 we must rely on increased utilization of already authorized facilities and such innovations as electronic monitoring for low-risk inmates.

CONCLUSION

This brief summary of the work of the Department of Justice emphasizes our commitment to the rule of law in all areas of our responsibility. Full and fair enforcement of the law, both civil and criminal, is essential in redeeming the promise of Government to provide equal treatment to its citizens and to protect their rights, including foremost among them their right to be free from fear in their homes and their streets and their communities.

I am proud of the achievements of this Department. With the resources we seek today, we hope to expand on those achievements. I assure you of our full cooperation in the coming budget process, and I will be happy to try to respond to your questions and concerns.

Thank you, Mr. Chairman.

Senator **HOLLINGS**. Thank you. I believe our colleague Senator Adams has an opening statement.

Mr. **THORNBURGH**. Good morning.

LAW ENFORCEMENT CRISIS IN WASHINGTON STATE

Senator **ADAMS**. Mr. Chairman, thank you very much, and I will be brief, and it is an opening statement.

Attorney General, my concern that brings me here today involves a law enforcement crisis in my State that is a result of rapidly expanding caseloads of Federal and State courts from drug-related prosecutions. I have every indication the problem is only going to get worse, despite your testimony this morning.

As a former U.S. attorney in the western district of Washington and as a former Cabinet officer, I understand that these hearings are an exchange of information, as well as simply receiving information, and, therefore, I have asked the chairman for a few short minutes here to indicate that I chaired a recent hearing in Seattle and the chief of the narcotics section of the Seattle Police Department testified that the price availability of heroin and cocaine on the streets of that city has remained unchanged in the past year. It is cheap and it is plentiful. In addition, major cocaine seizures this year have already exceeded last year's record level as of April 11.

I am fully aware that Mr. Bennett, as the so-called drug czar, is responsible for coordinating Federal policies regarding supply, demand, and reduction in the national drug control strategy. But Mr. Attorney General, you are the chief law enforcement officer in this country, and as the commanding general in that effort, and I have served under generals, and I know that this is your position, you need to know what I am hearing from your line officers in the field, in the State of Washington.

I want to go first to Yakima County. Yakima County, WA, is experiencing a virtual siege as a result of drug trafficking and drug-related crime. It is on the pipeline. It is in a rural area, but the crime rate in that largely rural county exceeds the rate found in Miami, Detroit, and San Diego and all the other recently designated high intensity drug trafficking areas. The Federal judge and the U.S. attorney in Yakima have been in communication with me, and they are in desperate need of additional Federal resources. In Spokane, WA, the senior Federal judge is working nights and weekends to keep up with an ever-increasing number of criminal filings. He has written to me on several occasions pleading for assistance in securing an additional judge or help in that district to handle the drug-related cases.

Seattle, Takoma, Tri-cities, and Everett all face the same problem. We are hearing inspirational words from the administration but see little in the way of tangible assistance. We need more judges, prosecutors, and Federal law enforcement personnel, which I have requested both in writing and orally from the czar, and I am making this statement to you this morning so you are aware of our deep and continuing concern. Each of these communities has a similar request for Federal authorities: Help us to shut down the cocaine and heroin pipeline out of the Yakima Valley, before our criminal justice systems collapse.

Senator Biden and I recently introduced, along with a number of our other colleagues, legislation that would provide a pool of $300 million for local assistance to communities experiencing a disaster of drug trafficking. It is a disaster just like a natural disaster, general. I hope you will take a close look at that bill, and after you have looked at it, could lend your support to its passage.

Now, I understand, also, you have recently expressed your support for splitting up the ninth judicial circuit and creating a new circuit. Quite frankly, creating a new court bureaucracy without any additional judgeships will do nothing to address the real problems we face in our State and throughout the Northwest. We do not need an additional bureaucracy so much as we need additional law enforcement personnel, judges, and prosecutors.

For today, I hope you will provide this Appropriations subcommittee with a clear indication of when communities like Yakima, Spokane, Tri-cities, Seattle, and Takoma will get the level of Federal assistance they so desperately need and deserve. I pledge to you my assistance in helping the chairman and the ranking member in securing additional congressional funding for whatever is needed to get this job done.

I did Federal law enforcement, general, and drug-related crimes. We have always had a problem in the Northwest, first the Vancouver pipeline, then the Mexican pipeline, black tar heroin, so on and so forth, so I am not speaking to you from a viewpoint of theoretical criticism, I am speaking to you from your line officers. Your line officers in the Pacific Northwest are in deep trouble, and they need all the help they can get, and they need it in terms of personnel, and they need it in terms of funding. They are trying to pull people out of their other areas to do drug trafficking, and as they do that, somebody has to pay to cover the others. They are exhausted.

Thank you very much, Mr. Chairman, and the ranking member, for giving me an opportunity to make an opening statement.

NATIONWIDE DRUG PROBLEM

Senator HOLLINGS. We will let you and the Attorney General get together here in just a minute. I may add, and this in no way diminishes what Senator Adams has said, I was just thinking, our distinguished ranking member, former chairman, and I went to South Carolina in February. We would both reiterate what he says about Yakima. I can tell you about my own home town plus different cities in South Carolina. The drug scourge is endemic to the entire country.

As you say, we have got the drug barons under siege. We had them under siege in Turkey, but they moved from there to the laboratories in Marseilles, France, until we got them there. Then, they moved down to Peru and onto Bolivia. Now they are in Colombia and they are in Mexico. In Burma, your own DEA would not even go in and see them, said you all would get killed. We can't get there. They have got their own uniformed armies in upper Thailand, Laos, and Burma. They produce and package their own heroin. I will show you a bag in my office with a label on it, a little small cellophane bag that carries the drugs, labeled because it is high quality stuff. They tell me it would be worth about $250,000.

The bottom line is it is a tremendous industry out there, and Senator Adams, we are going to have to increase funding for law enforcement, in large measure and continue our commitment there, but the ultimate, long-term solution is going to be, I believe, education. It may take many years, but only if we eliminate the demand for illegal drugs will we effectively stem the tide on the supply side. And, only through education will we illustrate the destruction of drug use.

Specifically, General Thornburgh, you said that you will be opening a DEA office in Florence, SC, and I welcome and appreciate the increase in agents assigned to my State from 13 to 15. I guess what I am trying to say is I would like to have 26 DEA agents. You know what I mean?

INCREASED RESOURCES IN WASHINGTON STATE

Mr. THORNBURGH. Let me respond to Senator Adams' statement.

Senator HOLLINGS. Go right ahead and do that.

Mr. THORNBURGH. I was in Washington last month and met with our U.S. attorneys and our FBI and DEA personnel there, and also met with members of citizen groups that are trying to deal with the community problems we have in many areas. I was particularly impressed with the job that had been done in Tacoma, with the task force that had been put together, the partnership established between Federal and local authorities to deal with the influx of the Crips and the Bloods from Los Angeles. That operation has virtually been shut down by a cooperative law enforcement effort. We have provided for increases in the number of prosecutors in both those districts.

In the western district, we will add 10 new assistant U.S. attorneys, a 33-percent increase up to 42. In the eastern district, 4 new prosecutors, from 11 to 15, another 33-percent increase. And under the appropriations provided last year, we have trebled the aid that goes from the Federal Government to the State government for distribution under their plan to deal with the drug problem.

We support the administrative conference's call for 75 new Federal judges in recognition of the fact that judicial man and woman power is necessary, as well, and subscribe heartily to the notion that simply more investigators, more prosecutors, more judges, and more prisons alone are not going to deal with the drug problem. One of the things that I spent some time on in your State was community leaders who are addressing the demand side through programs that mirror the President's commitment to have a comprehensive plan that emphasizes prevention, education, rehabilitation, and treatment in an attempt to reduce that appetite for drugs which is fed by, as Senator Hollings points out, sources from all over the world. As long as that demand is there, somebody is going to supply it. I would dare say even an infinite amount of law enforcement resources would not provide us with an answer.

But I am proud of what our men and women on the front lines are doing. They work long hours, sometimes at literal risk to their lives, and in particular, I compliment those who serve in your State with whom I had the opportunity to spend 2 days and get a sense of what their problems were. We will try to be as attentive as possible to the concerns that you have expressed. I think help is on the way, and we will try to use those resources effectively.

Senator ADAMS. General, thank you. We have to have it in Yakima. It is the end point of the chain, and I might, incidentally, say that I was in Takoma 3 weeks ago with a press conference, and while we were going over the Hilltop thing between the Crips and the Bloods, why, of course, people had to scatter because of the gun shots. It was the first time a press conference was broken up by gun shots.

Mr. THORNBURGH. That is when you are glad you are a former prosecutor.

Senator ADAMS. Yes, sir; I was. [Laughter.]

Thank you very much, Mr. Chairman.

ADDITIONAL ANTIDRUG RESOURCES

Senator HOLLINGS. Senator Rudman.

Senator RUDMAN. I don't know if Senator Adams has another hearing to go to or not, but just in case he does, I would like to observe that we have added, last year, $1.7 billion across the Department of Justice budget for this whole drug program, $1.7 billion.

I have been monitoring fairly closely what the Department has been doing. Of course, much of the drug funding we provided is for prisons. I think one of the striking figures in the Attorney General's testimony this morning is the figure of the basis for incarceration in Federal prisons; 49 percent of current inmates are drug offenders compared to 25 percent just a few years ago. That is one of the largest costs of the whole program, and we have to come up with that money. Much of that money I would prefer to spend elsewhere. Unfortunately, if you don't have adequate prison facilities, then the prisons become a revolving door.

I think close to the $1.75 billion we added last year across the entire spectrum of the Justice Department budget was as much as we could afford last year. It was intensely debated within the Congress. As you know, Senator Nunn and I worked on the basic bill 2 years ago, and last year again with Senator Hollings we came up with the funding. I expect that the Department would be willing to do exactly what you are talking about, assuming that we can find the resources, which would be another quantum leap above what we did last year.

PRIORITIES IN DRUG WAR FUNDING

One of the problems is that there are many who feel that it is a losing battle on the interdiction and law enforcement side; as long as we put all our resources into that area, we are going to lose the war. I don't know if they are right or they are wrong, but I am convinced of one thing: From my own experience as Attorney General in New Hampshire—a State which has a border with Canada and many of the problems as you have in the Yakima Valley—there is no amount of money that we can spend that will successfully interdict a major supply of narcotics coming into the country unless we go on a full military alert, and nobody is willing to do that. That is No. 1.

No. 2 is that as tough as it may be for the short term, we ought to be very careful about how we allocate available resources between supply and demand. Although we will do everything we can to fund the Justice Department requests, we must do more to fund the education departments of the various States to make sure that we can start, I believe down at kindergarten, with these drug education programs.

Now, in my own State, I was appalled to learn that a program called DARE, and I am sure you have it in your State——

DRUG EDUCATION PROGRAMS

Senator **Adams**. We have it and it works well.

Senator **Rudman** [continuing]. I was appalled to find the small number of schools in the State that had sufficient funds to have the DARE Program. So I have worked with our State officials to make sure that we have adequate funding for the DARE Program in every school. It makes little sense to put billions of dollars into the Justice Department, if these youngsters, who are the source of the demand several years from now, don't get strong educational incentives not to use drugs. This is an excellent program, I am sure in your State as it is in mine.

So I want to say that I don't disagree with what you say. The problem we have in fighting for our 302(b) allocation is that Senators on other committees say, "Fine, we think you ought to have more resources for Justice, but we want to do more in education, so maybe 5, 6 or 7 years from now, we can see a tapering in demand."

I agree with Attorney General Thornburgh; that until we start doing something about demand, we are not going to win this fight. That is not to say I don't support your request; I do. But I am just making an observation. We increased drug funding in the Justice Department $1.75 billion last year. We will probably increase funding again this year. And yet the tidal wave of drugs just sweeps across the country. We cannot make progress until kids literally start saying, "I don't want to use that stuff."

Senator ADAMS. I agree with you on the treatment. My problem, general, is that I host the D.C. Subcommittee in Appropriations and then this Yakima problem. Our problem right now is to get the streets back from the Crips and the Bloods in Tacoma, and in Yakima what is happening in their war is they have overwhelmed the courts and the enforcement system and the incarceration system because it is the end of a pipeline where they are shipping it in.

Until we get those streets back and the system working, our DARE Program is working very well. I am in absolute support of it and in what you say, but if we can't get our law enforcement to at least stabilize the situation, particularly on the streets of this town where we put in more policemen and it is beginning to come up, then you can't work with the school as well because the deputy that you pull out to put in the DARE Program is not out there in the street stopping the open air market.

So that is why I made the statement, and I agree with you completely: This drug epidemic will stop only with education and treatment, but we have got to get the streets back first, general. Thank you very much Warren.

SOUTH CAROLINA DRUG HEARINGS

Senator HOLLINGS. Thank you, Senator. What we had was a series of comprehensive drug hearings in February. We lined up in South Carolina—Senator Rudman and I will never forget it—the solicitor, the sheriff, chief of police, other prosecutors, the custodians of the jail and what-have-you, education folks, treatment counselors, parental groups, community organizations, et cetera. We asked the law enforcement people there, "If we could get just one person per county to help fight this war on drugs"—I have 46 counties in South Carolina—"what would you do?" "Would you want a couple more jail cells, one more sheriff, one more prosecutor, one more U.S. attorney or what?" They all agreed on an additional DARE, drug abuse resistance education, officer for each one of the counties.

Senator RUDMAN. And these were all law enforcement people.

Senator HOLLINGS. The law enforcement people were unanimous in their support of DARE.

Mr. **THORNBURGH**. I am not surprised.

RETURN ON LAW ENFORCEMENT FUNDING

Senator **HOLLINGS**. They have a good grasp of the drug problem. The law enforcement crowd out there, they are alert and they are alive. In that light, you have got Yakima with the Crips and Bloods and Goops and Goblins or whatever else you call them. We had narco-terrorists storm the jail last month in Charleston during a trial on a major drug case. Now, on the law enforcement side, we all know we are making money with the DEA.

In 1988, we had $671 million in assets seized, and the 1989 appropriation for the DEA was $535 million. In 1989, we had $980 million in assets seized by DEA and the 1990 appropriation is $549 million. Their fiscal year 1991 request is $700 million.

We have got outstanding U.S. attorneys. Our own U.S. attorney in South Carolina is worth about five right now; he is doing an outstanding job. The FBI is doing an outstanding job. The DEA is doing an outstanding job, and of course, we brag about our U.S. Marshals Service because we find under the Marshals Service, we are making money with the asset forfeiture fund, whereas the Customs crowd over there in Treasury is losing it. It is like delivering lettuce by way of a rabbit. They don't ever get there—[laughter]—they don't get money at the end of the line. They get a lot of seizures but no money. So we ought to understand that.

Yet now that we are performing in South Carolina—I have gone from two real property seizures in the last year, a little less than 1 year, to 52—I need more staff for the Marshals Service in the State. We have really stepped up the fight against drugs, but we can't handle the huge increase in seizures. So let's look at that. We need more in that Marshals Service, particularly in South Carolina.

U.S. ATTORNEY'S OFFICE IN FLORENCE, SC

Now, you mentioned opening the DEA office in Florence, SC, and I appreciate it. But, I have also got a peculiar interest in the new U.S. attorney's office in Florence. The fact is that our U.S. Attorney Bart Daniels solicited a gentleman who is an outstanding young lawyer that served as a law clerk in a very successful law practice to take on the assistant U.S. attorney's post and open up the new office in Florence. The name of the gentleman is Rene Josey. After he had initially refused the job but was persuaded over several months, he finally said, "All right, I'll give you a couple of years at it, but let's go."

At the time he said "Let's go," I knew we had eight additional assistant U.S. attorney positions coming to South Carolina. But, at this point our U.S. attorney informed Mr. Josey that, "You better check in now and make the proper political pledges and so forth." This is a practice I have never heard about. At any rate, Mr. Josey made two visits to Senator Thurmond's office, then had to write a letter of support, only to be told that the Florence office was closed, that they weren't going to open up the Florence office after all. Now, instead of closing it, you are, in fact, opening it. Is Rene

Josey the one that U.S. Attorney Bart Daniels solicited for that job, or are you not familiar with the matter?

Mr. THORNBURGH. I can't answer that, Senator, but we will find out and get you an answer.

[The information follows:]

U.S. ATTORNEY'S OFFICE, FLORENCE, SC

During the summer of 1989, United States Attorney E. Bart Daniel discussed the possibility of employing Mr. Rene Josey to be an Assistant United States Attorney in a branch office in Florence, South Carolina that Mr. Daniel was planning to staff for the first time. In September 1989 Mr. Daniel offered to submit Mr. Josey's application paperwork to the Department of Justice with a view to employing Mr. Josey to be an Assistant United States Attorney in the new branch office in Florence.

During November 1989, Mr. Daniel decided to postpone opening the Florence office because of budget considerations. At that time, the United States Attorney did not have sufficient funding to adequately staff the Florence office, provide appropriate furniture, equipment, and supplies, and meet the other pressing needs of the other staffed offices in the District of South Carolina.

Prior to November 1989 Mr. Daniel had asked Mr. Josey to meet with Mr. Warren Abernathy, State Director of the staff of Senator Strom Thurmond. The meeting was requested solely as a matter of courtesy. Mr. Daniel does not staff his office on the basis of political considerations. He has hired a number of Assistant United States Attorneys who have ties to the Democratic Party.

When Mr. Daniel was unable to open the Florence office as originally planned, Mr. Josey indicated that he was no longer interested in pursuing employment as an Assistant United States Attorney. Mr. Daniel is not opening the Florence office, and has hired two attorneys to assign to the Florence office.

LEGISLATIVE AND PUBLIC AFFAIRS STAFFING LEVELS

Senator HOLLINGS. I would appreciate it very much.

With respect to another little matter that we have before our committee, as you can well imagine, we keep in very close touch with the liaison. We have our own liaison here with the Justice Department, and last year at the beginning of the year, we were surprised when the Attorney General said we didn't need these people, and 19 career people were RIF'd. Thereupon, we saw later in the year, they were being rehired in another group. It came to the attention of the conference, and we wrote in the conference report that the legislative affairs office be maintained at the level of positions that you asked for in the reprogramming, namely, 18 positions for legislative affairs, 11 for public affairs. There has been a request again for reprogramming this time an increase, but then a withdrawal of the request.

Are we going to adhere to the language in the appropriations bill that we have passed here or not?

Mr. THORNBURGH. We have had a problem in this regard, Mr. Chairman. I am the first one to acknowledge it. The problem was first initiated when I found both these offices to be staffed in excess of what they were authorized to have. Because of a directive from the Office of Management and Budget to take steps to cut back, we did make these cuts. It is my determination to either stay within the limits which you have properly established or to seek your approval for making changes.

We have had a change in the leadership of the Office of Legislative Affairs. We hope very soon to have a permanent appointee as the head of the Office of Legislative Affairs, and I am sure that that new appointee will be anxious, extremely anxious, to work with the staff to ensure that we comply with the strictures that have been set down. We have strayed somewhat from that path. I regret that and am sensitive to your concerns. We will do everything we can to address that.

ATTORNEY GENERAL VISIT TO SOUTH CAROLINA

Senator HOLLINGS. I appreciate it. I understand that one of their jobs is to sort of keep contact with us in Appropriations, different problems that come up from time to time, and inform us, especially when we get an Attorney General visiting South Carolina. Are you visiting South Carolina on Monday?

Mr. THORNBURGH. I will be there on Monday, yes.

Senator HOLLINGS. I was only informed of your upcoming visit the other day—by my law enforcement people down in the State, not by your office. It sort of makes me feel like only one-half of the Congress is being informed, Senator.

Senator RUDMAN. I didn't know about it.

Senator HOLLINGS. Only one-half. [Laughter.]

They are going down to announce what you and I did and what the Judiciary Committee did not provide for. We provided for the equitable sharing authorization in yours and my bill. I hope you will announce that Senator Rudman and Senator Hollings provided the authority for those checks when you get down there and start handing them out.

Mr. THORNBURGH. That is emblazoned in my mind.

NEED FOR SAVINGS AND LOAN RESOURCES

Senator HOLLINGS. We welcome you to South Carolina.

With respect to savings and loans, I notice with interest a special study made by your own Department of Justice, detailing the extent of the serious savings and loan crimes. When you say we are getting on top of it, I have the sheet right here. It is a comparison of March 1, 1989, Department of Justice survey of FBI divisions, U.S. attorney offices, additional personnel needs for financial institution, fraud and embezzlement, and the Attorney General's December 7, 1989, actual allocation.

In reviewing the survey, we find that we actually have a need for investigating 20,327 cases. We talk like we are on top of it, but then we have got 2,400 bank fraud cases, General Thornburgh, with 1,300 inactive major cases, indicating, of course, a need for 224 additional FBI agents, 113 additional assistant U.S. attorneys, 142 additional FBI support staff but instead of doing that what we are doing is cutting that white-collar crime program, a decrease of $3,255,000, or a decrease of 65 positions.

That is what worries the committee. Those are the figures for white-collar crime—you are cutting back when your own offices are begging for more. That is unheard of to have that many major inactive cases pending there, 1,300 inactive major cases.

Mr. THORNBURGH. Let me respond, if I might.

Senator HOLLINGS. Staff is showing me Mr. Dennis' statement now. In his statement, he verified this last month, Assistant Attorney General of the Criminal Division, Edward S. Dennis, and he says "There is a significant reason why these shortages existed, that there is insufficient funding for further requests for positions right up to date." I am not giving you last year's information.

Mr. THORNBURGH. I don't want to engage in an overdose of candor with this committee, but I must say one thing that I think relates both to the white-collar crime figures that you have cited and the previous drug figures that you have cited.

It has been over 20 years since I first became involved in law enforcement, and during that period of time, I have met a lot of prosecutors and police and agents and sheriffs and what-have-you, and I have yet to run into one of them that says they have enough in the way of resources.

An almost infinite amount of resources that can be put into the criminal justice process. The responsibility of managing those resources requires balancing the resources that are available among priority needs. As I indicated, drugs and white-collar crime are two of our major competing priority interests, and I think it is important to recognize that there is a willingness on the part of this Department to use, and, I believe, use effectively, whatever we get in the way of resources. We have been treated extremely generously during this last decade by the Congress and two administrations in increasing our resources.

With regard to white-collar crime, I think what has to be emphasized is that there is no net reduction in commitment to white-collar crime. In fact, in the budget request that we are submitting this year, we are seeking 205 additional FBI agents, and in the budget that the appropriations produced with the $50 million for the savings and loan area, we have over 400 additional agents, prosecutors, and accountants.

The reduction you referred to, I believe, Mr. Chairman, represents the results of the sequester action that was taken last year due to the delay in reaching agreement on the budget. That was applied across the board and resulted in reductions being made in programs that were necessary to comply with the mandates of the sequester.

But I think if you examine the budget request that we have made this year, it clearly indicates that white-collar crime is a continuing high priority and that when you examine some of the results that are being obtained in the prototype of the 27 task force operations that are being established across the country now, that is, the Dallas bank fraud task force, there is a significant impact there on major cases.

Can we reach every case? Obviously not. Can we reach every major case? Probably not. But again, given the number of increased agents and prosecutors that are available, we expect to have a substantially greater impact in years to come than was available while this problem was developing during the 1980's.

FBI WHITE-COLLAR CRIME PROGRAM

Senator HOLLINGS. Of course, we are not looking at a sequester. We are looking at a 1991 budget request. The 1991 budget request for these outstanding cases, most recently verified here a couple of weeks ago by the Assistant Attorney General, is that they are outstanding. I just looked at Dallas that you mentioned. Dallas has

437 outstanding cases. The budget request for next year includes a decrease of 65 positions in the white-collar crime program, a cut. That is what I am asking about.

Mr. THORNBURGH. In the FBI?

Senator HOLLINGS. That is right.

Mr. THORNBURGH. I don't understand that. Our budget people advise me, Senator, that is only one-half of the equation. There is an increase of 440 and a decrease of 65, which nets out to an actual increase of 375, and if that is presented in a way that is misleading, I apologize. There is an actual increase of 375 FBI positions in the white-collar crime area.

Senator HOLLINGS. Will they be allocated to the white-collar crime area, is the important thing?

Mr. THORNBURGH. Yes, sir.

Senator HOLLINGS. There is a tremendous concern, and I feel it as I go around the Congress and everywhere else. What they are saying is, "What is happening with the savings and loans?" It has cost us $360 billion and now estimates are up to $400 billion.

Senator RUDMAN. Why would that be reported that way in a budget document?

Mr. THORNBURGH. Beats me.

Senator HOLLINGS. To set the record straight, your budget says Department of Defense procurement fraud, 198 positions; bank fraud and embezzlement, 68 positions.

Mr. THORNBURGH. I will ask the budget people to explain that, Senator. We have an actual increase of 375 positions. Why it is shown——

Senator RUDMAN. As a decrease——

Mr. THORNBURGH [continuing]. As a component of the decrease. I am not a budgeteer; I am a simple lawyer, too simple sometimes.

FUNDING OF INCREASED AUO COSTS

Senator HOLLINGS. As lawyers, let's go to the pay, because we have solved that $72 million. Do you remember the administration——

Mr. THORNBURGH. AUO.

Senator HOLLINGS [continuing]. Put in controls for overtime and now we have solved it. Now we are going to do it again, and I don't know whether we are over budgeting. In other words, your budget has the FBI lapsing new positions. In the March 1990 report last month you reported that you were going to lapse 116 agents, pick them up at the end of the year, that you could absorb the cost without feeling any pain, and you put out a new budget on March 9 and said, "All right, we can absorb this money—we will just lapse 116 agents." These new agents won't come on board, of course, until the end of the fiscal year.

These are the things we see here on the Appropriations Committee. Did we over fund the Department of Justice last year by some $72 million?

Mr. THORNBURGH. We got it socked to us by the AUO that we couldn't account for it at the beginning of the year and we had to scramble around. The first proposal that came to me was that we take into account the AUO cost by cutting back in staff for white-collar crime, drugs, and organized crime. I found that unacceptable, and with cooperation of the FBI and our budget people, engaged in other moving around of funds to prevent that.

But it was troublesome, Mr. Chairman. I am not sure, I can't guarantee you, that we did it in the wisest way, but I think we certainly did it in a way that was preferable to cutting back on these priority areas that we have discussed this morning.

Senator **HOLLINGS**. Let me yield to our colleague.

DEVELOPMENT OF BUDGET REQUEST

Senator **RUDMAN**. These budget numbers, I was having a hard time following them. My staff was showing me the numbers in the submission, and I still couldn't figure it out. I guess I will take it home tonight and study it and see what happens. Could you quickly explain why that is?

Mr. **THORNBURGH**. This is Mike Roper from Budget.

Senator **RUDMAN**. Would you quickly explain why it was set forth that way?

I would just like to know for some future reference.

Mr. **THORNBURGH**. He is not a lawyer. [Laughter.]

Senator **RUDMAN**. That is probably a help.

Mr. **ROPER**. I will give you as straight an answer as I can. When this budget was being formulated by the administration last fall, the initial passback, which you are familiar with, that we received from the Office of Management and Budget, was based on the initial sequester of October 16, which, you remember, was around 5 percent.

Senator **RUDMAN**. Yes.

Mr. **ROPER**. In constructing the final President's budget for 1991, the administration restored most of those resources back up to the actual sequester of December 1989, but they did not restore all of those base resources. In the FBI, the amount totaling $27 million is a portion of that original sequester amount that was not restored for 1991 in the construction of the budget.

Senator **RUDMAN**. I think I understand that now. So that is why they show a reduction and an increase.

Mr. **ROPER**. That is right.

Senator **RUDMAN**. You have to net the two up.

Mr. **ROPER**. That is right.

Senator **RUDMAN**. This is a remarkable place, the District of Columbia. We have a new math here, we really do. We have a totally different approach to numbers here. This is the only place I know, if you are receiving a salary of $50,000 a year and you asked your boss for an increase of $30,000, which would bring it to $80,000 and you only got $65,000, the press would report and the administration would dutifully report that we sustained a $15,000 cut. Really, that is the way math is done.

Mr. **THORNBURGH**. The way my wife finances her clothes purchases.

Senator **RUDMAN**. That is the way she does it.

Mr. **THORNBURGH**. She can go out and buy a dress for sale for $100 reduced to $40. She figures she saved $60, so maybe it isn't so crazy at that, Senator.

Senator **Rudman**. Maybe it isn't.

Senator **Hollings**. You and I have got votes on the budget coming up.

SAVINGS AND LOAN FRAUD CASELOAD

Senator **Rudman**. At 11:30, right. I know. We have one-half an hour here. I don't have a lot of questions. I am just curious about one thing. Maybe you have covered it, but I understand although additional resources have been devoted to savings and loan investigations, there has been a decline in convictions and pretrial diversions. Is that because it is in the pipeline?

I know you are having a lot of trouble recovering funds in that area.

Mr. **Thornburgh**. Yes; well, I think it is somewhat misleading to look at this from a solely quantitative point of view. These are, as I pointed out, extremely difficult cases. They inevitably involve a paper chase that sometimes extends across international boundaries. What we have done is to try to concentrate the efforts with the resources at hand on the major offenders, the major cases. It is illustrative, sometime, to talk to—and you may want to do this—some of these prosecutors about what the nature of their involvement is. These are not cases where you break down the doors, seize the evidence, put the cuffs on the defendant and try him in a couple of days. They have high-priced counsel on the other side. I think any measure of success that relates solely to the number of convictions might be misleading. I think a more qualitative assessment is appropriate, for example, in the *Vernon Savings and Loan* case, which was one of the most notorious cases. When it went into default, it saddled the taxpayers with a $1.3 billion bill. Virtually an entire executive suite of that defunct operation has now been convicted, and the CEO is facing a 30-year jail sentence.

Senator **Rudman**. You have also got some restitution in that case.

Mr. **Thornburgh**. I wouldn't want to exaggerate the prospects for restitution, because most of the assets have been frittered away. It is going to be very difficult, although we are asking for additional people to undertake civil actions under the legislation provided last year, but I think the notion that we are going to anywhere come near, dollar-for-dollar, 50 cents on the dollar or 25 cents on the dollar in recovery is overstated. It is a very discouraging prospect to try to find the money.

Senator **Rudman**. That is something that probably 1 year from now we will have a better handle on.

Mr. **Thornburgh**. Yes; I think so. We will have this entire 27 city operation.

Senator **Rudman**. But it is interesting that with enforcement cases of that kind, you have, in the *Milken* case for example, a $600 million fine. A lot of people don't understand that $400 million of that goes into a special fund for restitution of people who were defrauded; $200 million goes into the Treasury. I assume that is a procedure that is used when it is available.

Mr. **Thornburgh**. It was modeled on the Drexel-Burnham-Lambert corporate guilty plea fine and restitution fund, and, I think, represents a way that gives some of these folks who have been actually done in by white-collar criminals some return on the loss.

OFFICE OF JUSTICE PROGRAMS DISCRETIONARY GRANTS

Senator RUDMAN. Let me ask you about the Bureau of Justice Assistance. On March 19 in the Federal Register, the Department announced its plans for allocating discretionary grants under that program. It said, "An important feature of the OJP approach this year is an enhanced effort to assist State and local law enforcement more directly through cooperative efforts with other Federal criminal justice agencies."

I have heard from some people in New Hampshire who are concerned that there is a tendency to take those funds intended for State and local programs and instead, direct them to Federal agencies. Just how much of that BJA discretionary grant money is going to go to State and local government and how much is going to go to Federal agencies?

Mr. THORNBURGH. Well, it all goes to benefit State and local government. A lot of it is administered through Federal agencies. Our drug enforcement task force operations, for example, are very successful. We now have well over 50 of these which bring together DEA agents and their State and local counterparts so that they can gather intelligence together and can compile and formulate their strategy together. The net impact is more effective State and local law enforcement.

Senator RUDMAN. I wonder if someone in your office could amplify that answer for the record. I would like kind of a road map of where you are going with this.

Mr. THORNBURGH. Sure.

Senator RUDMAN. Because this is something that we have many inquiries about, from State police officials, local officials, and so forth, I would like a more detailed response. There is a lot of support for these programs in Congress. I am not criticizing the Department; I just want to understand what the concerns are.

Mr. THORNBURGH. I think, again, it may be a misleading budget presentation, and we will be glad to give you a full road map on that.

Senator RUDMAN. All right.

Mr. THORNBURGH. Because it really is for State and local officials.

[The information follows:]

USE OF DISCRETIONARY GRANT FUNDS

All of the discretionary funds awarded by the Bureau of Justice Assistance (BJA) will be used to benefit State and local criminal justice systems. Throughout the history of the program, BJA has made awards to public and private agencies and entered into collaborative agreements with other Federal agencies to provide assistance to States and localities. These practices will continue in 1990.

The discretionary program plan was written to make the most effective and efficient use of BJA's funds. In instances where another bureau, office or Federal agency possesses special expertise in a program, the States are best served if that bureau, office or agency takes the lead in the program's administration. This assistance could come in several forms, by transfer of funds, joint funding, memorandum of understanding or through other collaborative efforts. Utilizing existing Federal expertise in training and administration may, in some cases, more directly and cost-effectively serve the interests of States and localities than would direct grants to intermediary nongovernmental third-party providers. Examples of such arrangements in the past include administration of the Drug Use Forecasting Program and development and monitoring of independent evaluations of BJA programs. These projects are funded by BJA and carried out by the National Institute of Justice. In addition, training in asset forfeiture has been provided by the Federal Bureau of Investigation. Finally, the use of interagency agreements may be particularly appropriate in light of BJA's statutory mandate "to support national drug control priorities" and the theme of the President's National Drug Control Strategy to enhance coordination among all Federal agencies in the delivery of assistance to States, localities, and the public.

JUSTICE DEPARTMENT ROLE IN FCC CASE

Senator RUDMAN. Finally, because I want to make sure that my colleague from Alaska has plenty of time, and I am sure the chairman has other questions, I just have somewhat of a procedural question, and maybe you can help us.

There is a very interesting situation with the *Metro Broadcasting* v. *Federal Communications Commission* case. I don't know if you are personally familiar with that or not. That is a case in which the Justice Department, as I understand it, is appearing in that proceeding in behalf of the petitioner, not the FCC, essentially disagreeing with the FCC and its position. I know the FCC is an independent agency, and there is a long history of independent agencies and their relation to the executive branch, although sometimes you would never know it. But at any rate, what is the rationale here? You have the Justice Department essentially saying, "We agree with the petitioner; we disagree with the independent agency." You also have Congress getting involved with filing amicus briefs. What is the rationale, the intellectual rationale for what is going on in the case? I would just like to understand that.

Mr. THORNBURGH. The normal procedure is for the Solicitor's Office to represent the Government, that is, the U.S. Government, before the Supreme Court. On occasion, and this is one of them, the Solicitor will grant leave to a client, in effect, to file their own brief and state their own views to give the court the full advantage of their standpoint. It is not a common procedure, but it was done in this case as requested by the FCC in order to spread all the arguments on the record.

Senator RUDMAN. Well, now, you say at the request of the FCC, but am I correct that the Government, the Solicitor, is going to be filing essentially a brief opposing the FCC and in support of the petitioner?

Mr. THORNBURGH. We will state the views of the administration, our views of what the law is in this case. The FCC will state their policy and what their view of the law is.

Senator RUDMAN. Is that highly unusual?

Mr. THORNBURGH. I don't know statistically, but in my years with the Department, I would say it is somewhat unusual. I don't know of other cases where that has been done.

Senator RUDMAN. Would you distinguish between the Solicitor taking that position vis-a-vis an independent agency as opposed to a Cabinet agency?

Mr. THORNBURGH. Yes; clearly.

Senator RUDMAN. There would be a difference?

Mr. Thornburgh. The independent agencies, so-called, have a different degree and status than the Cabinet agencies.

Senator Rudman. Historically, and some even think constitutionally.

Mr. Thornburgh. Yes; I don't know of any case, and I would have to ask the Solicitor, and maybe we can have him give you an explanation.

Senator Rudman. If you could amplify that for the record?

Mr. Thornburgh. Sure.

Senator Rudman. I don't necessarily agree or disagree.

Mr. Thornburgh. It is unusual.

Senator Rudman. It is most unusual, and I would just like to know about it.

Mr. Thornburgh. Yes.

Senator Rudman. Mr. Chairman?

[The information follows:]

Department of Justice Role in Federal Communications Commission Cases

The following information is provided in regard to the Department's role in two related cases before the Supreme Court, *Metro Broadcasting, Inc.* v. *FCC* (No. 89-453) and *Astroline Communications Co.* v. *Shurberg Broadcasting* (No. 89-700). The two cases were argued together on March 28, 1990; decision is still pending.

The two cases arose from the United States Court of Appeals for the District of Columbia Circuit. Different panels of that court reached contrary conclusions on the constitutionality of certain FCC minority preference policies. One divided panel struck down the Commission's restriction of its distress sale program to minority buyers; another divided panel upheld the Commission's granting of preferences for minority ownership in comparative licensing proceedings. Private parties sought Supreme Court review in each case, and the Court granted certiorari.

The FCC decided to defend its policies granting preferences and restricting access to certain programs on the basis of race or ethnic background. After analysis of the FCC's programs under Supreme Court precedent, the Office of the Solicitor General determined that it could not defend the challenged practices. This determination was in accord with prior positions the Department had taken before the Supreme Court and other courts, and prior positions the Department had taken on the specific programs before the FCC itself.

The Department also determined that it was vitally important that it file briefs stating its views before the Court in these cases, since the cases represent the Court's first occasion to consider the validity of Federal minority preference programs in the wake of *City of Richmond* v. *J.A. Croson Co.*, 109 S. Ct. 706 (1989). Consequently, these cases may resolve such questions as what standard of review applies to race-conscious Federal programs, how much deference should be given to congressionally authorized racial preference programs given Congress's role under Section 5 of the Fourteenth Amendment, and whether Federal administrative agencies have broader leeway in adopting racial preference programs than do State and local governments. The United States has a very strong interest in how these questions are resolved, since they have implications for all Federal preference programs, not just those of the FCC. Consequently, we decided to submit our views, and we have no doubt the Supreme Court expected us to do so.

Our disagreement with the FCC on the appropriate position to advance before the Court presented the question of whether to authorize the FCC to file briefs on its own behalf. The FCC does not have independent litigating authority before the Supreme Court in cases, such as these, arising under 47 U.S.C. 402(b). The Department has on occasion allowed an agency that does not have independent litigating authority to appear on its own behalf in the Supreme Court, where the United States then files an amicus brief taking a different position. See, for example, *Dirks* v. *SEC*, 463 U.S. 646 (1983); *Board of Governors of the Federal Reserve System* v. *Dimension Financial Corp.*, 474 U.S. 361 (1986). The authority to delegate litigating responsibility in this manner is conferred by 28 U.S.C. 518, which provides that the Attorney General and the Solicitor General shall conduct and argue suits in the Supreme Court in which the United States is interested, "[e]xcept when the Attorney General in a particular case directs otherwise."

After being advised of the Department's position on the merits in these cases, the FCC requested authority to file briefs and appear on its own behalf before the Court. In light of all the circumstances, the Department decided to grant the FCC's request. It was our view, in these cases, that the agency should be permitted to present its arguments in favor of its policies, and that the Court should have the benefit of the agency's own views as well as the contrary views of the United States, represented by the Office of the Solicitor General.

NATIONAL DRUG INTELLIGENCE CENTER

Senator HOLLINGS. I am going to turn this over to Ted, if he doesn't mind, because I have got some questions before we vote upstairs at 11:30, but I think all three of us are interested in that National Drug Intelligence Center. Here I am cutting out good agents and everything else, and yet you want to establish a new drug intelligence effort which seemingly is going to duplicate a heck of a lot of intelligence already out there. It would be more intelligent to actually keep the agents on than get an $86 million super duper center. I am saying that only advisedly. I am on the Intelligence Committee. If there is a weakness in this Government, it is on human intelligence. If there is an overallocation of resources, it is on these satellites; they want to get everything from the satellite, and they don't know where Noriega is when we go in and have to hunt around for 3 or 4 days, which is totally silly. They were telling me every morning where he was, where he was eating breakfast and everything else of that kind, until they went in. Then I said, "You got him?" And they said "Who?" [Laughter.]

I said, "Noriega." They called me and woke me up at 1 o'clock in the morning, and they kept searching around for him.

The work of the DEA, the FBI, the Marshals, the Bureau of Prisons, and everybody else that you have, they have been doing a highly intelligent job. What is this new center going to give us? It is going to come under your budget and mine, I understand.

Mr. THORNBURGH. Yes; it is designed to use all of the various sources of intelligence in a strategic way rather than simply in a tactical way, and that means having a central repository for all the various sources of both human and technical intelligence to enable us to use those fine agents in a more efficient and effective way. It is not an uncommon notion in the intelligence field, the difference between what we call tactical intelligence, which is fairly case specific, and strategic intelligence, which is meant to map the deploying of the operation.

But I am probably not the best person to give you a briefing on that. We will be glad to provide some further information.

Senator HOLLINGS. Well, they say Government is the only ship that leaks from the top, and if I were going to make a bust, tell your FBI agents and the DEA agents not to say a blooming thing until after the bust is over. I have been in law enforcement and everything else. When you get these super dupers and you have got to report in and report in, and report in, and, "Why didn't you tell us ahead of time?" Report in, you are really going to stultify law enforcement work.

Mr. THORNBURGH. I think there maybe some misunderstanding about what the purpose of this is, and I will be glad to try to clear that up.

Senator RUDMAN. I will be here when you get back.

Senator **Hollings**. I would appreciate that. We appreciate it, and my apologies.

Mr. **Thornburgh**. Not at all. Thank you, Mr. Chairman.

Senator **Rudman**. You and I are going to cancel our votes out against each other, anyway, so we have to keep going.

[The information follows:]

THE NATIONAL DRUG INTELLIGENCE CENTER

The principal focus of the National Drug Intelligence Center (NDIC) would be the development and sharing of information on major drug trafficking organizations for law enforcement purposes. The NDIC would bring together the collective analytic capabilities of all agencies to produce comprehensive analyses of drug trafficking organizations. It would also develop other strategic drug intelligence products (crop analyses, country reviews, trafficking trends, economic and foreign policy issue papers).

Strategic intelligence is evaluated information on broad patterns and trends to be used by policy planners and management decisionmakers. Strategic intelligence includes information on drug cultivation, production, availability, and trafficking patterns. It can also provide our foreign policy planners with information regarding the drug enforcement capabilities and commitment of foreign governments so as to better plan international programs.

The NDIC would also serve as a clearinghouse for certain intelligence and law enforcement information, providing guidance to agencies involved. To the extent possible, State and local law enforcement officials would be provided information from the NDIC on major organizations and would be kept apprised of ongoing Federal efforts against major trafficking organizations.

The NDIC would not produce tactical intelligence. Tactical intelligence is actionable information on the current or imminent location and movement of particular smuggling targets, and requires a near-term law enforcement response to effect arrest and seizure. Because tactical intelligence is often time-critical in nature, it is not usually analyzed comprehensively, but is disseminated quickly to field units for appropriate action. Tactical intelligence applies to drug interdiction and investigation, as well as to money-laundering activities and violations of currency reporting laws. The tactical intelligence products of the El Paso Intelligence Center, Customs Service/Coast Guard C^3I's, etc., would be used in concert with the NDIC to the extent that, in combination, they offer a strategic perspective or support major national operations against trafficking organizations. The NDIC would complement—not duplicate or replace—the efforts of existing intelligence centers, including EPIC and FINCEN. The NDIC would draw information from these centers as necessary.

The Department of Justice is currently conducting a thorough study of the proposed NDIC. A final report is expected no later than mid to late summer 1990. Representatives of the Department are available to brief Members and their staff on this study and the NDIC, generally.

EXXON VALDEZ PLEA BARGAIN

Senator **Rudman**. Ted?

Senator **Stevens**. I left the Defense Subcommittee, Mr. Attorney General. We have got an appropriations bill on the floor and three subcommittees meeting at the same time. I have two questions. First we had a conversation about the proposed plea bargaining on the *Exxon* case, and I appreciate your frankness in explaining to me the situation. As you know, I am a former U.S. attorney, and I try to maintain the position that those of us in the Congress have little business interfering with the criminal process.

But this one is a very important issue for Alaska. I am not judging whether there should be a plea agreement one way or the other. But if there is to be, I am hopeful that the agreement will recognize the relationship between the civil litigation and the criminal litigation under the Clean Water Act. It is my judgment that the criminal provision is there because in so many instances, and I think the *Exxon Valdez* demonstrates this, the damages to the environment, to the resource base, are so difficult to prove. If there is some sort of an agreement that leads to the payment of a substantial sum by Exxon, I am hopeful that it can be placed in a fund that will be used to restore the Prince William Sound resources and not just be deposited into the miscellaneous receipts of the Federal Government.

Have you made any final decision whether or not there is going to be a plea bargain worked out? I don't think that is our business; that is up to the judges and you. But I do think we ought to be heard in terms of some of the terms of that agreement. Do you have a position yet in terms of that fund, that kind of disposition of the money?

Mr. THORNBURGH. Let me first compliment you on highlighting the difference between criminal and civil proceedings, because often in these types of cases, the public does not fully understand the respective functions of the criminal law and the civil law. We are prepared in the Department of Justice to proceed on both fronts in that regard. An indictment has been returned, and the case will be tried, we expect, on the criminal charges. We have the statutory period within which to seek civil redress as we develop a sense of what the actual ad damnun clause of that proceeding would be, what the damages are going to be.

Certainly, in presenting to the court in the event of a guilty verdict or a plea of guilty entered by the defendants in this case, we are going to seek the maximum penalties, as I indicated at the time the indictment was returned, and will seek to use the alternative fine provisions which relate to the identifiable amount of economic loss suffered. I don't know whether you were here at the time we were discussing the *Milken* and *Drexel-Burnham-Lambert* cases, but in those instances, the guilty pleas were accompanied by sizable fines plus a commitment to create a fund for the benefit of defrauded investors, the victims of this criminal activity.

That is the kind of ingenuity that I think has to be utilized by prosecutors in bringing to conclusion these cases that have a particularly widespread impact, and the kind of thing—I don't think I would violate any confidence in telling you—that was discussed at the time that there was some reaction to the plea overtures made by Exxon. It would be kept in mind if that prospect arises again.

We are very sensitive to this, particularly in a case where you have a corporate defendant and there is no jail time involved. You have here a situation where the monetary damages and the monetary fund that may be created for recompense of losses to the natural habitat are really first and foremost in your considerations in assessing whether or not a plea offer is viable and in urging the court ultimately, in the event of a verdict of guilty, what the construct of the damages should be.

CREATION OF FUND TO RESTORE PRINCE WILLIAM SOUND

Senator STEVENS. I am pleased to hear that. Prince William Sound is about the same size as two of the Great Lakes. I flew over that oiled area. I saw over 500 miles of oiled water in 1 day and later, as I told the President, that oil had spread a total of about

1,000 miles down the coast line. It is a very substantial resource base for the North Pacific. I don't think we can determine the extent of the damages in just 1 year or so.

We are creating an oilspill institute that will last 10 years. We funded the study of what has happened, but it is my judgment that we ought to have a restoration fund. I think you have the capability through either the plea bargaining or the sentencing process, if it goes to trial and there is a conviction, to create a fund that could be administered by Federal land and resources managers. It doesn't even have to be the Federal Government. Some of these great conservation organizations could manage it and take action to restore these resources when the loss is identified. It may take years to identify some of the losses, so I hope that you will keep that in mind.

The second reason I came here was a provincial one.

Senator RUDMAN. Is that right?

Senator STEVENS. I am always heard on provincial matters.

Mr. THORNBURGH. The other thing, again, not to be overlooked is the civil case, which we have 6 years after the event to present. I think it is prudent to wait a considerable length of time to see what the shape and measure of those damages might be. Given that time period's availability, we have time to meet the concerns that you are expressing about not trying to wrap it all up in a hurry, in view of the fact that damages really can't be assessed yet.

Senator STEVENS. Strangely enough, under existing Federal law, I think it is tougher to get the recovery of damages in the civil actions to work to restore the resource base. It takes longer; it is more difficult than under the criminal situation.

Mr. THORNBURGH. And one of the options, clearly, that you and I discussed here is to do it all in one fell swoop, and it will require some ingenuity because it is a particular kind of case.

ALASKAN JUDGE FOR THE NINTH CIRCUIT

Senator STEVENS. My other subject was this: We are now and have been, since 1986, without an Alaskan member of the ninth circuit. I find that I am literally a voice in the wilderness on this one.

Senator RUDMAN. A good one.

Senator STEVENS. Think of this. Just the Federal lands alone in Alaska are equivalent in size to the combined acreage of the States of Connecticut, Delaware, Hawaii, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Pennsylvania. [Laughter.]

Mr. THORNBURGH. You had to do it.

Senator STEVENS. That would be only two-thirds of our State.

Senator RUDMAN. In size.

Senator STEVENS. It is only one-half of the area represented by our State.

The problem about judicial matters in terms of Alaska and the ninth circuit is that one-half of the judges in the ninth circuit are from California; a total of 14. Most of them stay south of the Tahachapis in southern California, and they have no concept of what distance means and of what size means in terms of litigation.

It is just like anything else. I think the Federal judiciary in terms of the circuit level, is a collegial thing. Unless there is someone there that understands the State, understands some of the climatology, some of the problems of transportation, some of the problems of the indigenous people there, it is very difficult to get them to understand. Most of them have never been to Alaska; they wouldn't even come if we threw a bash. [Laughter.]

And I really think it is time Alaska had a judge. Judge Boochever of Juneau, AK, who served on the bench with distinction is now retired. We have a great many members of the Alaska bar that would be very eminently qualified to be on that court.

I am just getting a little disturbed that there has been no movement now for 4 years to even consider an Alaskan for one of those positions. As a consequence, I have joined the team to split the circuit, as you know, and I think that is a very viable thing to do. If we split the circuit and cut California out of our circuit, then we are certain that no one State would have one-half the membership of the new circuit while some States are not represented at all.

But I am here to once again urge you to do something about getting us a representative on that circuit. My friend here seems to think it doesn't make any difference. How many circuit judges come from New Hampshire?

Senator RUDMAN. Historically, one.

Senator STEVENS. Well, historically, there was one from Alaska, too. [Laughter.]

Senator RUDMAN. Short history. [Laughter.]

Senator STEVENS. From the time of statehood until 1986.

Senator RUDMAN. It was a short history.

We have got to move along here.

Mr. THORNBURGH. I will convey those concerns to my boss, the President.

Senator STEVENS. Convey him some names. [Laughter.]

Senator RUDMAN. Are you a candidate?

Senator STEVENS. He is with us. He is with us.

Mr. THORNBURGH. I would remind you that the administration does support the proposal to split the ninth circuit because of the imbalance as a result of the increase in the caseload, the number of judges, and the inability to handle that.

Senator STEVENS. I thank you for that support, as a matter of fact.

ADDITIONAL STATEMENTS

Senator RUDMAN. The subcommittee has received several statements from various individuals and groups interested in the programs of the Department of Justice. We will insert the statements in the record at this point.

[The statements follow:]

STATEMENT OF THE REGIONAL INFORMATION SHARING SYSTEM

The Regional Information Sharing System (RISS) Grant Program respectfully requests that the Congress appropriate for Fiscal Year 1991 the $15 million authorized in the Anti Drug Abuse Act of 1988 so as to fully fund the RISS programs and without a 25% match requirement.

This will allow RISS to continue to enhance the ability of more than 2,700 state, local and federal criminal justice agencies across the nation to identify, target and remove criminal conspiracies and activities spanning jurisdictional boundaries that involve drug trafficking, organized criminal acitivity and white collar crime. "The federal government is dedicated to reducing drug trafficking by simultaneously implementing many strategies, each focused on a different aspect of the problem. Law enforcement is an essential element of our national strategy".[1]

The Office of Justice Programs (OJP) Regional Information Sharing Systems (RISS) Program is a federally funded program to support law enforcement efforts to combat drug trafficking, organized criminal activity, and white collar crime. Six regional projects provide criminal information exchange and other related operational support services to local, state, and federal law enforcement agencies located in all fifty states. One regional enforcement project, the LEVITICUS PROJECT, provides coordination to agencies investigating crimes related to the coal, oil, natural gas, and precious metals industries. These projects are:

1. **New England State Police Information Network (NESPIN): Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.**

2. **Regional Organized Crime Information Center (ROCIC): Texas, Oklahoma, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida.**

3. **Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN): Indiana, Michigan, Ohio, Pennsylvania, New York, New Jersey, Delaware, Maryland.**

4. **Mid-States Organized Crime Information Center (MOCIC): North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missour, Wisconsin, Illinois.**

5. **Rocky Mountain Information Network (RMIN): New Mexico, Arizona, Colorado, Utah, Nevada, Idaho, Wyoming, Montana.**

6. **Western States Information Network (WSIN): California, Oregon, Washington, Alaska, Hawaii.**

7. **The Leviticus Project: Mississippi, Pennsylvania, Virginia, Indiana, Kentucky, Alabama, Georgia.**

The RISS projects are filling law enforcements need for rapid, but controlled, sharing and exchange of information and intelligence pertaining to known or suspected drug traffickers and criminals. The President has stated "we must begin the war on drugs by ensuring that all Federal, State, and local information on the drug production and trafficking problem is shared appropriately".[2] The continuous rise of drug trafficking and endless emergence of organized crime groups across the nation requires a concerted effort by law enforcement at the federal, state, and local level. "The war on drugs cannot be fought--much less won--without good intelligence".[3]

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[1] GAO Report to Sub Committee on Invest, Senate Committee Government Affairs. 1989.

[2] National Drug Control Strategy, September 1989.

[3] IBID.

Congress funded the RISS programs to address this need. The success of RISS has been acknowledged and vigorously endorsed by the International Association of Chiefs of Police, (IACP) and other national law enforcement groups. "The projects have both small and large successes, but the impact on criminals apprehended by means of RISS resources has been devastating".[4]

As a result of the 1989 investment by the Congress of $13.4 million the RISS program produced a return of 5,452 arrests, seized narcotics with a street value of more than $111 million, seized more than $47 million in currency, and recovered or seized property worth an estimated $52 million. In addition, $98,079,423 was referred to IRS, and RICO civil seizure accounted for an additional $6,706,244. In the ten year period since 1980 when the program was fully implemented, the RISS programs have produced well over $2 billion in results; at a total cost that approximates 5% of that amount.

Case specific support has been furnished to hundreds of local and state police and sheriff departments during 1989. While most of these cases do not attract the publicity that many federal investigations receive, they have had an unrivaled impact on main street America; in local jurisdictions, that are the grass roots of law enforcement in the nation. The National Drug Control Strategy recognizes that regular ongoing interagency and intergovernmental cooperation are elements necessary for the full utilization of the available intelligence resources and investigative expertise. "Cooperation and joint operations are the rule not the exception".

Local and state law enforcement who depend on the RISS projects for information sharing, funding and technical assistance are anticipating increased competition for decreasing budget resources. It is untimely to require RISS members from state and local agencies to self fund the cost of fighting the nation's crime/drug problem and the RISS program cannot make up this decrease in funding as it has no revenue source of its own. Thus, the services of the RISS program will be available only to those agencies who can afford to pay for the services RISS provide. Cutting the RISS appropriation by requiring the 25% match will produce $3.6 million in funds that will be used to offset an increase for a program in another part of the federal budget. The matching requirement should not be imposed on the program.

Authorized full funding of the RISS program is necessary in order to offset inflation factors and permit membership growth --- without reducing current levels of project service delivery to existing members. RISS membership has increased from approximately 1000 members in 1982 to 2700+ in 1989.

It is respectfully requested that the Congress fully fund the RISS programs to continue their successful partnership with state and local law enforcement agencies in their fight against drug trafficking and organized crime, and without a match requirement.

We are grateful for this opportunity to provide the committee with this testimony and appreciate the support this committee has continuously provided to the RISS program.

STATEMENT OF THE LAW-RELATED EDUCATION NATIONAL TRAINING AND DISSEMINATION PROGRAM

I am Father T. Byron Collins, S.J., Special Assistant to the President of Georgetown University. I am submitting this testimony in support of the national, coordinated Law-Related Education Program ("LRE").

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[4] The RISS Program: A $12 million bargain, Police Chief Magazine, August 1987.

LRE respectfully requests that the Subcommittee act to ensure that fiscal year 1991 funding of the Law-Related Education program continue to be earmarked at the current 2.9 million dollar level.

CONGRESSIONAL SUPPORT

The members of the Subcommittee have been most supportive of LRE's vital delinquency prevention effort. Most recently, the Conference report to accompany the fiscal year 1990 State, Justice, Commerce appropriations legislation stated:

> The conference agreement includes . . . $2,900,000 for the coordinated, Law-Related Education (LRE) program.

Conf. Rpt. to accompany H.R. 2991, Rep. No. 101-299, 101st Cong., 1st Sess. 39 (1989).

In previous years, the Conference has also included express language in its reports directing funding for this vital program. S. Rep. No. 979, 100th Cong., 2nd Sess. 35 (1989); S. Rep. No. 182, 100th Cong., 1st Sess. 48 (1987); S. Rep. No. 425, 99th Cong., 2d Sess. 45 (1986); S. Rep. No. 150, 99th Cong., 1st Sess. 42 (1985); and S. Rep. No. 206, 98th Cong., 1st Sess. 45 (1983).

The authorizing committees have also sought to maintain the coordinated, national Law-Related Education program as a top priority special emphasis prevention and treatment program. In reauthorizing the Office of Juvenile Justice and Delinquency Prevention ("OJJDP"), the 100th Congress retained statutory language expressly authorizing OJJDP to "develop or implement further a coordinated, national law-related education program." The Congress also expressly authorized OJJDP to expand the LRE program to include "disseminating information regarding model, innovative, law-related education programs to juvenile delinquency programs, including those that are community based, and to law enforcement and criminal justice agencies for activities relating to juveniles." H.R. 5210, the Omnibus Drug Initiative Act of 1988. Pub. L. No. 100 - 690.

Over the years, many members of Congress, both House and Senate, both Democratic and Republican, have publicly expressed their strong support for LRE. These members include Mr. Dale F. Kildee (D.Mi.) Oct. 21, 1988, Cong. Rec. page H. 11220; Senator Daniel K. Inouye (D.Ha.) Oct. 14, 1988, Cong. Rec. page S. 16102; Senator Mitch McConnell (R.Ky.) Oct. 18, 1988, Cong. Rec. pages S. 16781-82; Senator Dennis DeConcini (D.Az.) Oct. 18, 1988, Cong. Rec. S. 16775; Senator Edward M. Kennedy Oct. 21, 1988, Cong. Rec. pages S. 17308; Senator Paul Simon (D. Il.) Oct. 14, 1988, Cong. Rec. pages S. 15960-62 and 16071-2; Senator Strom Thurmond (R.S.C.) Nov. 10, 1988, Cong. Rec. page S-17353; Senator Arlen Specter (R.Pa.) Nov. 10, 1988, Cong. Rec. Page S. 17387; and many others.

Funding at the 2.9 million dollar level is the minimum necessary in order to maintain past levels of service; permit the LRE program to continue to expand into non-school settings where the problems of drugs and violence are most acute; and continue the national implementation of vital and successful programs that comprise the National LRE Initiative on Drugs and Violence. Funding the national Law-Related Education program, coordinated by those organizations with the experience and expertise necessary to ensure proper implementation, represents an investment in democracy; an investment in public safety; and an investment in the eradication of drugs and teen violence.

THE LRE MISSION

LRE performs one of the most critical functions in our democracy -- it teaches young people about the foundations of our free, democratic society and their rights and responsibilities as citizens. Through a cooperative effort by five organizations -- the American Bar Association, the National Institute for Citizen Education in the Law, the Constitutional Rights Foundation, the Center for Civic Education/Law in a Free Society, and the Phi Alpha Delta Public Service Center -- the national, coordinated LRE program helps our young people avoid the scourge of drugs, violence and juvenile delinquency and become effective, law abiding and participating citizens. Specifically, the national LRE program coordinates and assists law-related education programs throughout the nation by providing training and technical assistance; information resources; preliminary assistance to future sites; program and curriculum development; and assessment and management services.

LRE ACCOMPLISHMENTS

The national, coordinated Law-Related Education program is deeply appreciative of the support that it has received from this Subcommittee; from the authorizing committees; from the Congress as a whole; and I might add from OJJDP.

- With your support, we have been able to expand law-related education programs from the original 11 target states to 47 states by the end of 1990.
- With your support, we have continued to provide materials, training, and technical assistance services to all of the state programs involved in the national Law-Related Education network.
- With your support, we conducted public/private partnership conferences last year attended by 1,391 teachers, 210 administrators and 530 volunteer resource persons from the justice system. Nearly 1,500 persons also attended our state-based leadership training programs.
- With your support, we were able last year to train more than 9,000 teachers, 400 administrators and 1,200 resource persons at staff development workshops. Based on the number of classroom teachers attending our training events, we estimate that 1,483,000 public and private school students received LRE lessons from instructional personnel trained by this program.
- With your support, LRE added four new states in FY '89: Rhode Island, New Jersey, Ohio and Nebraska for a total of 43 states. From September of 1989 through March of 1990, LRE staff provided on-site training and technical assistance services in 39 states, the District of Columbia, and Puerto Rico.
- With your support, LRE continues to be successfully institutionalized, that is to say, made a permanent part of school curriculum. A recent independent evaluation of LRE found that: (1) important progress is being made in

institutionalization; and (2) the national coordinated LRE program plays a vital role in institutionalizing LRE through its provision of materials, training, and technical assistance.

- With the additional funds made available last year by Congress, we will also be providing direct financial assistance to the 29 states that have participated in the LRE program for three or more years. This assistance will assist these states in institutionalizing programs already underway as well as in providing training and technical assistance to teachers who are new to the field.

LRE EVALUATION

The impact of these accomplishments is especially significant in that the national, coordinated LRE program is one of the only programs which has been proven to help to prevent a broad range of delinquent acts. The Office of Juvenile Justice and Delinquency Prevention has noted that evaluations of the Law-Related Education program have been, "encouraging . . . confirming the previous findings that such education serves as a significant deterrent to delinquent behavior." U.S. Department of Justice, OJJDP, Eighth Analysis and Evaluation of Federal Juvenile Delinquency Programs 69 (1985). The Twelfth Analysis and Evaluation of Federal Juvenile Delinquency Programs published in 1988 similarly states "[A] national study suggests that Law-Related Education ("LRE"), when properly implemented, can reduce the tendency to engage in delinquent behavior." (at p. 57).

Law-Related Education has been shown to change students' attitudes toward authority figures such as judges, police, teachers and parents. It has also caused young people to identify and interact more with peers who are involved in positive community action and reject those who take part in anti-social behavior. The Law-Related Education programs's success is based principally on a delinquency prevention theory known as "bonding" whereby youths learn that our legal and governmental systems are based on sound principles with which they can identify, thus causing them to "bond" to society's accepted values, norms and institutions. Students raise their sense of self-worth through participation in activities such as mock trials and community action projects which show them that they can be successful and have the ability to contribute to society in many positive ways.

PLANS FOR THE FUTURE: THE NATIONAL LRE INITIATIVE ON DRUGS AND VIOLENCE

In the 1990-91 program year, Oklahoma, Alabama, West Virginia, and Delaware will be joining the LRE Program. The State Bar Association in Oklahoma has already made a substantial financial commitment that will complement federal support for LRE in that state. By the end of 1990, 47 states will be participating in LRE.

In addition to adding new states to the LRE network, nearly half of LRE's resources in fiscal year 1990 will be focused in two specific areas: (1) the further dissemination of the drug-focused LRE lessons that have been developed, field-tested and refined during the last two years; and (2) the initiation of pilot LRE programs for youth in juvenile justice settings. An important component of the pilot programs will be drug-focused lessons. Both of these national initiatives will be supported by direct seed grants to participating states along with training, technical assistance and materials.

With continued funding at the 2.9 million dollar level, LRE will be able in fiscal year 1991 to continue to target resources on the crisis of drugs and violence. LRE will be able to continue to expand its program curriculum for young people in non-school settings such as detention centers, correctional facilities and youth group homes. These programs will continue to emphasize an anti-drug, anti-violence message.

Furthermore, the national LRE program will continue to develop and disseminate LRE's anti-drug and anti-violence programs to young people in school settings. Under LRE's National Initiative on Drugs and Violence, LRE implements programs that attach real world anti-drug and anti-violence community service experiences to classroom lessons. These programs demonstrate to young people that they can help to reduce the level of violence and the use of drugs in their own schools and communities. Under this Initiative, LRE also is able to implement programs that teach young people the dispute resolution skills that they need in order to resolve problems in schools, families and neighborhoods without resort to violence or other socially inappropriate means.

CONCLUSION

Every federal dollar committed to the national, coordinated LRE program is leveraged by state and community contributions an estimated seven times. Without question, the program has proven productive and cost effective. Our traditional decentralized system of education requires a continuing and expanding Law Related Education effort in order to reach students in those school districts and schools not yet involved in this important effort, as well as in non-school settings.

At a time when world events demonstrate each day the value of a citizenry knowledgeable in democratic principles and committed to the respect for law that is the basis for this country's enduring stability, the national, coordinated LRE program provides vital opportunities for our nation's youth. By expanding these proven techniques to address the urgent problems of drugs and violence, the coordinated, national Law-Related Education program holds special promise for the future of our nation's youth.

I thank you for your continued support.

STATEMENT OF CRIME STOPPERS INTERNATIONAL, INC.

The purposes for which Crime Stoppers International, Inc., was founded are to promote the welfare of communities throughout the world and to lessen the burden of federal, state and local governments by:

a) Assisting their respective law enforcement agencies, and those in other selected parts of the world, primarily through the establishment and support of existing state and local Crime Stoppers Programs, modeled after the Albuquerque Crime Stoppers Program, which groups will make funds available for use in offering rewards for information about crimes;

b) Training and advising law enforcement personnel and others who participate in such Programs;

c) Helping to motivate members of the public to cooperate with their respective law enforcement agencies;

d) Stipulating and encouraging the flow of information to, among and between various law enforcement agencies;

e) Creating and circulating films, video and sound tapes, and printed materials about crime prevention and Crime Stoppers Programs, and otherwise promoting such Programs; and

f) By visiting places where existing or potential Crime Stoppers Programs are located, to advise concerning the operations thereof.

Funding for Crime Stoppers International, Inc.

Crime Stoppers International is seeking financial assistance through federal agencies, as its only source of income is annual membership dues from local and state Crime Stoppers Programs.

CSI continues to assist existing Crime Stoppers Programs and create new ones, and to provide technical assistance, training, information exchanges and public information services.

Crime Stoppers International Statistics, as of April 6, 1990

Cases Solved	282,467
Narcotics, Stolen Property Dollar Recovery	$1,572,602,188
Avg. Amt. Rec. Per Case Cleared	$5,567
Defendants Tried	54,614
Defendants Convicted	53,365
Rate of Conviction	97.7 Percent
Rewards Paid	$20,508, 789

STATEMENT OF SEARCH GROUP, INC.

I am Gary L. Bush, Senior Policy Advisor for justice information systems for the Kentucky State Police. I write to you in my capacity as Chairman of SEARCH Group, Inc. (SEARCH).

The purpose of this submission is to seek your support for designating $700,000 in funding for SEARCH's National Technical Assistance and Training Program in the FY '91 appropriation for the Bureau of Justice Assistance, (BJA) in the Department of Justice.

SEARCH Group, Inc., the National Consortium for Justice Information and Statistics, is a nonprofit corporation supported by state dues and governed by an assembly of Governor appointees from each of the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. SEARCH's mission for over two decades has been to assist state and local criminal justice agencies in the use of information technology to combat crime.

CONGRESSIONAL AND BJA SUPPORT

SEARCH's National Technical Assistance and Training Program is unique -- it is the only national program that provides no-cost assistance to state and local criminal justice agencies with respect to the operation and improvement of their computer systems. Furthermore, because SEARCH's program is national, SEARCH is able to replicate successful computer applications in one state or locality and disseminate and transfer the successful application to other states and localities. In the same vein, because SEARCH's program is national, SEARCH is able to provide its assistance in a manner that promotes the interstate

compatibility of criminal justice information systems. The beneficiaries are state and local criminal justice agencies throughout the nation; the federal government, which is the largest single consumer of arrest and conviction and other criminal justice information; and the public. Moreover, throughout its long history, SEARCH has emphasized that the collection, maintenance and dissemination of criminal justice information must be done in a way that is protective of privacy and civil liberties.

In recognition of the important and unique contributions made by the National Technical Assistance and Training Program, both BJA and the Congress have been extremely supportive. Members of the Senate Judiciary Committee, for instance, both Democratic and Republican, have consistently called for the improvement of state and local criminal justice computer systems. In the Omnibus Drug Initiative Act of 1988, the Congress amended BJA's charter to reemphasize that BJA's express mission is to, "provide additional personnel, equipment, training, technical assistance and information systems for more widespread apprehension, prosecution, adjudication and detention and rehabilitation of persons . . . including criminal and justice information systems to assist law enforcement, prosecution, courts and corrections organizations (including automated fingerprinting identification systems)." H.R. 5210, Omnibus Drug Initiative Act of 1988, Pub. L. 100-690, Section 6091.

In keeping with this emphasis, members of the State, Justice, Commerce Subcommittee supported language in the Conference Report to accompany the State, Justice, Commerce Appropriation Act for FY' 89 which provided, "$1,000,000 for operational information systems support (SEARCH)." Conference Report to accompany H.R. 4782, Appropriations for the Departments of Commerce, Justice, and State, The Judiciary and Related Agencies for the fiscal year ending September 30, 1989, 100 Cong. 2d Sess., S. Rep. No. 100-979.

In FY '90, however, the Office of Justice Programs (OJP) has imposed a $250,000 ceiling on BJA support for the National Technical Assistance and Training Program. While we understand the financial pressures on OJP and the need that all of us in criminal justice feel to channel funds to targeted anti-drug programs, we deeply believe that the underfunding of the only national program for criminal justice information systems support will do significant damage to the criminal justice infrastructure and eviscerate the effectiveness of targeted programs. Accordingly, we respectfully request legislative support for funding in the amount of $700,000--the minimum amount necessary to operate the National Technical Assistance and Training Program on a comprehensive and effective basis.

BENEFITS OF NATIONAL TECHNICAL ASSISTANCE AND TRAINING PROGRAM

SEARCH's National Technical Assistance and Training Program:

- facilitates the development and implementation of state-of-the-art computer capabilities among state and local criminal justice agencies;
- promotes the replication and dissemination of successful computer strategies on a national basis;
- improves the accuracy, completeness, and reliability of arrest and conviction and other criminal justice information;

- enhances coordination, compatibility, and communication among criminal justice agencies, thereby contributing to the effectiveness of a national criminal justice information system; and
- increases the ability of criminal justice agencies, particularly small and medium-sized criminal justice agencies which often lack financial resources and specialized computer personnel, to operate computer systems in a cost efficient and effective manner.

SEARCH's National Technical Assistance and Training Program assists in the reliable and timely identification of suspects and offenders; assists in the effective prosecution and adjudication of offenders, including drug related offenders; assists in the efficient use of criminal justice resources; and assists in the production of comprehensive and compatible criminal justice statistics and research information.

Furthermore, the National Technical Assistance and Training Program provides essential infrastructure support to targeted block and discretionary grant anti-crime and anti-drug initiatives. Without information and technology support, these initiatives are handicapped.

TECHNICAL ASSISTANCE

SEARCH provides technical assistance via the telephone and the mail, and, when the needs of agencies exceed the expertise of local resources or when the need is particularly acute, SEARCH also provides on-site technical assistance -- from two weeks to several months.

In-House

SEARCH's program of in-house technical assistance provides access to a unique, centralized source of data about information systems and related technologies that would otherwise be beyond the reach of most criminal justice agencies and, particularly, small- and medium-sized agencies. By placing a simple phone call, state and local agencies have immediate access to the specialized knowledge of SEARCH's professional staff. SEARCH annually receives hundreds of these service requests, and in response, project staff conduct research, provide references and referrals, and disseminate a wide range of written materials, including reports, manuals, guides, and system documentation. Based on past experience, we anticipate that in FY '91 SEARCH will respond to approximately 500 telephone service requests each of which, on average, will require two hours of staff time.

SEARCH's Membership Group of Governors' appointees and SEARCH's Criminal Justice Information Network (a network of criminal justice professionals with special expertise in information systems) are also available for consultation. Collectively, these groups provide indepth expertise on issues spanning all components of the criminal justice system.

As an example of telephone support, SEARCH was recently asked by one state to develop a user requirements definition for a management system that would connect 23 prosecutor offices in the state. In response to a request from another state, staff reviewed a county prosecutor's existing information system and made recommendations concerning a proposal for a new system that integrated law enforcement, prosecution and trial court records.

In addition to telephone and mail support, in-house technical assistance includes support for justice practitioners who visit SEARCH's National Criminal Justice Computer Laboratory and Training Center at SEARCH headquarters in Sacramento, California. These officials usually seek staff review, testing, and recommendations with respect to a specific software package or system. Every year, approximately 25 practitioners from all parts of the country receive one-on-one technical assistance in the National Laboratory and Training Center. If funding permits, SEARCH expects in FY '91 to provide 25-30 criminal justice officials with customized, in-house technical assistance in the National Computer Center and Training Laboratory in Sacramento.

On-site

The National Technical Assistance Program also provides on-site assistance to agencies that have special needs in automating their information system. Priority for technical assistance is given to block grant recipients, and among them, to grantees implementing operational, public domain systems. Since 1986, SEARCH has provided technical assistance to scores of agencies in 41 states representing all components of the criminal justice system.

The vast majority of our technical assistance is completed within a month, consists of two site visits of approximately 3-4 days each, and includes staff preparation and follow-up. In the past six months, short-term technical assistance was extended to state criminal justice agencies in Connecticut, Hawaii, Indiana, Maine, and Wisconsin. In addition, SEARCH has provided on-site technical assistance to local criminal justice agencies in Portland, Oregon and Seattle, Washington. With funding at the $700,000 level, SEARCH would expect to provide on-site technical assistance to about 40 criminal justice agencies in at least 20 states.

Beyond these efforts to provide short-term assistance, there exists a pressing need to provide more extensive, long-term technical assistance to states and/or agencies within states that are predominantly non-automated or that seriously lag in their efforts at automation. In response, SEARCH provides a limited number of agencies with technical support for up to several months, including multiple on-site visits, research and, oftentimes, complementary training sessions.

Depending upon the needs of the particular agency or state, the long-term assistance may include help in evaluating and planning the statewide integration of automated justice information systems or in enhancing, expanding or implementing a computerized criminal history (CCH) repository program. In our experience, this type of project often produces knowledge and products suitable for transfer to other jurisdictions. Indeed, the vast majority of SEARCH's technical assistance is multi-jurisdictional. When SEARCH provides technical assistance in one state, SEARCH often involves practitioners from surrounding jurisdictions.

In the last six months, SEARCH has conducted extensive, long-term technical assistance in Arkansas, West Virginia, and Wichita, Kansas. In Fiscal Year 1991, assuming adequate funding, SEARCH expects to conduct long-term efforts in three additional states to extend over the course of several months.

Software Development

Another component of the National Technical Assistance Program has been the development of public domain, automated information systems. SEARCH has created, supported, and documented software for prosecutors (D.A.'s ASSISTANT™); jail administrators (LOCKDOWN™); and state bureaus of identification (MICRONYM PLUS); and is currently developing a statewide information management system for law enforcement agencies in Pennsylvania (PA-LEMIS). These systems are core systems which can be broadly implemented in state and local agencies throughout the nation. Designed on commercial database management software, the systems function as foundations or platforms which local agencies can easily customize to address their unique information needs. Through these system development projects, BJA, in conjunction with SEARCH, plays an important role in setting standards and promoting national compatibility and uniformity.

NATIONAL TRAINING PROGRAM

Complementing the Technical Assistance Program is SEARCH's National Training Program which, since 1986, has trained nearly 1,800 criminal justice officials from 44 states in the use and application of computers and other information technologies. In FY '89 alone, SEARCH provided training to over 1,000 officials; 269 officials received training at the National Training Center in Sacramento; and 763 received training in classes conducted by SEARCH across the country.

The National Criminal Justice Computer Laboratory and Training Center serves as a hands-on resource for criminal justice practitioners to learn about and evaluate computer technology. The National Computer Laboratory and Training Center is presently configured with over 20 micro-computers using various operating systems and is equipped with state-of-the-art training technology. Classes are limited to about 25 students, thus affording a high instructor-to-student ratio. It is critical that this technology be maintained and updated on a regular basis. Federal support enables SEARCH to repair and upgrade the computer hardware as well as debug, update and modify software applications.

In addition, SEARCH conducts numerous regional, state, and local training sessions in order to make the most cost-effective use of grant funds and to reach the widest range of criminal justice practitioners requiring computer-related training. SEARCH also responds to requests from national, state and local criminal justice organizations and agencies to provide training to their members and staff.

Training sessions are customarily three to five days in length and include introductory courses such as microcomputer technology for criminal justice agencies and data processing for law enforcement managers, as well as advanced coursework in such topics as crime analysis and the seizure and examination of microcomputers as evidence in criminal cases.

If funding permits, SEARCH plans in FY '91 to conduct six training courses at the National Computer Laboratory and Training Center and another 10 sessions in as many states. Based upon past experience, we anticipate that these sessions will be attended by approximately 800 criminal justice officials from as many as 35 states. In addition, we anticipate that other criminal justice agencies and educational institutions will conduct training sessions at the National Training Center.

SEARCH, with BJA support, is also developing a National Consortium of Criminal Justice Computer Laboratories and Training Centers. The objective of the Consortium is to provide opportunities for convenient, local, hands-on training to officials from criminal justice agencies throughout the nation.

Rather than develop entirely new training centers dedicated solely to training criminal justice personnel, the Consortium will seek to identify existing microcomputer-equipped facilities that can be used as regional training centers for state and local criminal justice officials. Police training academies, community colleges, and private and state universities are likely candidates. The Consortium will provide a vehicle for disseminating training curricula and information to be offered by all Consortium members; foster cooperation and coordination between the academic and operational justice communities; and encourage the development of additional training and technical assistance resources for criminal justice practitioners within local communities.

Work in this area has already begun: a task force has been established and the task force held its first meeting in November 1989. Funding at the $700,000 level will permit work on the establishment of the Consortium to go forward in FY '91.

TECHNICAL ASSISTANCE AND TRAINING MATERIALS

SEARCH's National Technical Assistance and Training Program also includes the preparation, publication and national dissemination of materials and reports that assist criminal justice agencies in acquiring and using computers and other information technology. Recent publications have included reports on topical issues such as: automated fingerprint identification systems (AFIS) and other biometric technologies; directories, which identify existing information systems for potential transfer; program briefs, which guide agencies in implementing automated information systems; and comprehensive documentation for SEARCH authored software. Funding permitting, SEARCH plans in the next fiscal year to continue to publish timely and practical reports and guides for criminal justice computer users.

SUMMARY OF FY '91 PROPOSED ACTIVITIES

With funding at the $700,000 level, SEARCH expects that in FY '91 the National Technical Assistance and Training Program will:

- provide technical assistance by telephone to over 500 criminal justice agencies in every state in the union;
- provide indepth technical assistance at SEARCH's National Computer Laboratory and Training Center for representatives from 25 to 30 state and local criminal justice agencies;
- provide on-site, short-term assistance to approximately 40 state and local criminal justice agencies in perhaps 20 states;
- provide long-term technical assistance to three state criminal justice agencies;

- provide training to approximately 800 criminal justice officials from as many as 35 states;
- continue to implement the National Consortium of Criminal Justice Computer Laboratories and Training Centers; and
- continue to develop and publish practical criminal justice information system reference guides.

CONCLUSION

Congressional support for SEARCH's National Technical Assistance and Training Program does not promise a quick victory or big headlines in the war against crime and drugs. But, without question, Congressional support for the National Technical Assistance and Training Program makes a vital contribution to the war on drugs and crime. For a modest federal investment, leveraged many times over by state and local funds, a critical contribution is made to the ability of state and local criminal justice agencies to provide timely, accurate and compatible information for use in apprehending, prosecuting, and sentencing offenders.

Accordingly, we respectfully request that the Subcommittee act to ensure that Fiscal Year 1991 funding of SEARCH's National Technical Assistance and Training Program remain at the $700,000 level. We thank you, Mr. Chairman and Senator Rudman, for your continued support and we look forward to working with you, the members of the Subcommittee and the excellent Subcommittee staff in this year's appropriations process.

Thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator RUDMAN. Mr. Attorney General, we thank you very much. We have a few questions we would like answered for the record. I think we commented about those. We will keep the record open.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Facilities Program 2000

QUESTION: I see where the Department is starting a new facilities program and is asking for $970,000 during the first year, 1991. But, the budget justification advises that over the next few years, the Department is going to need another $69 million. In addition, GSA will be spending $260 to $305 million for the Facilities Program 2000.

When will this Subcommittee be asked to provide the additional $69 million needed for the Facilities Program?

ANSWER: In July 1989, the Acting Administrator of General Services and I agreed upon the allocation to the Department of Justice (DOJ) of 350,000 square feet of space in the planned International Cultural and Trade Center/ Federal Office Building (ICTC/FOB) which is within two blocks of the Main Justice Building (MAIN), 280,000 square feet of space in the Ariel Rios Federal Building (ARB), which is adjacent to ICTC/FOB, and approximately 400,000 square feet of space in a new facility to be leased within a six-block radius of MAIN. In addition, the General Services Administration (GSA) plans to renovate MAIN and the Government-owned Homeowners Loan Corporation Building (HOLC) to improve environmental conditions, upgrade electrical and cooling systems, and remove asbestos hazards in those buildings.

We originally estimated that over the ten-year implementation of Facilities Program 2000, approximately $69 million would be required to finance DOJ's portion of the expenses for the five facilities listed above, and the additional temporary or "swing" space to house DOJ personnel displaced during the renovation of MAIN. These expenses include space programming and design services, telecommunications installation, above-standard construction, and physical relocations. We currently project that approximately $73 million will be required for DOJ-related expenses for Facilities Program 2000.

QUESTION: Is this facilities expansion a priority of yours and will you be willing to forego other programs to give Justice new and remodeled facilities?

ANSWER: Facilities Program 2000 is the result of years of coordination with GSA, and it has received my participation and full support. For many years, DOJ has been working with GSA to consolidate a large number of DOJ components in the Washington metropolitan area. In March 1988, the previous Attorney General and the then Administrator of General Services signed a Memorandum of Understanding regarding the allocation to DOJ of approximately 1.2 million square feet of space in ICTC/FOB. However, objections were raised to DOJ's tenancy in this "international" facility, and the United States Information Agency emerged as an alternate agency for predominant occupancy of ICTC/FOB. In response to this development, in July 1989, the agreement outlined above was reached with the Acting Administrator of General Services.

Facilities Program 2000 represents DOJ's strategy to consolidate a portion of its headquarters personnel, currently housed in 20 leased buildings in the Washington metropolitan area, into five facilities. Accomplishing Facilities Program 2000 will result in substantial savings to the Government from reduced long-term lease costs, and dramatically reduce DOJ's physical fragmentation, thereby improving working conditions, lowering operational and administrative costs, and increasing productivity through increased physical proximity of staffs.

In order to minimize the impact of rising lease costs in downtown Washington, D.C. while consolidating the Offices, Boards and Divisions, DOJ has expressed its desire to be housed in Government-owned buildings to the maximum extent possible. Of the five buildings included in Facilities Program 2000, four are Government-owned and the 400,000 square foot new facility recently has been proposed as a direct Government-financed Federal Building by the Office of Management and Budget (OMB). Moreover, three of the five facilities (MAIN, HOLC, and ARB) contained in the agreement with GSA already exist, and two of those (MAIN and HOLC) are currently occupied by DOJ. Also, construction of ICTC/FOB along 14th Street, between Pennsylvania and Constitution Avenues, NW, was sanctioned by Federal statute, and space programming and design for that building currently are progressing.

The goal of Facilities Program 2000 is to minimize the Government's long-term housing costs by utilizing Government-owned facilities, and consolidating operations to increase efficiencies. In regard to foregoing other DOJ programs to implement Facilities Program 2000, we believe that the costs associated with this initiative have been mitigated to the extent possible, while its benefits to DOJ and the Federal Government have been maximized. Hopefully, this will eliminate the need to cut DOJ programs to compensate for the requested funding. Indeed, Facilities Program 2000 only will require an average of approximately $7 million per year in appropriations over its ten-year implementation. In the next decade, numerous leases will expire for DOJ facilities in the Washington metropolitan area, and the new leases otherwise would be negotiated at substantially higher current market rental rates. Therefore, the requested $73 million will be offset by the significant lease cost avoidances as a result of Facilities Program 2000.

Aircraft Operations

QUESTION: The Subcommittee is aware that the Department of Justice operates four separate air services -- United

States Marshals Service (USMS), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and the Immigration and Naturalization Service. I understand that the Department acquires new aircraft, uses seized aircraft, and is provided surplus aircraft by the military and the FAA. Your 1991 budget requests funds to purchase additional aircraft for the DEA.

Is the Department of Justice working with the military to see if suitable aircraft may be surplus to the military's need as the Department of Defense's budget contracts over the next few years? Wouldn't this reduce need for new dollars to procure new aircraft?

ANSWER: DEA is working continuously with the Department of Defense to determine if they can provide aviation support for our law enforcement operations. The Department of Defense provided DEA with a list of approximately 40 aircraft that are being designated as surplus, however, the aircraft did not meet our mission requirements or were so old it would be too costly to put them into service.

DEA's missions requirements are significantly different than the Defense Department's since most of DEA's domestic missions are for air-to-ground surveillance and undercover purposes which require a particular type of aircraft. Certain foreign mission requirements can be met with military aircraft if the aircraft are dedicated on a full-time basis to DEA. Military aircraft that are not dedicated on a full-time basis to DEA do not meet our mission requirements effectively. For example, the military has offered to transport equipment to South America for DEA. However, it has to be done when there is space available on a pre-scheduled military flight. DEA is often in the position of needing to transport equipment to South America to meet an immediate need and cannot wait for a pre-scheduled flight to a pre-scheduled destination.

To date, most of the discussions with the military have regarded a particular aircraft that would assist DEA in its implementation of the Administration's Andean Counter-drug initiative. The dedicated aircraft would conduct intelligence-gathering operations in South America. The type of aircraft needed to conduct intelligence missions can cost ten to twenty times as much as the aircraft DEA normally purchases for domestic surveillance missions.

Japanese - American Internee Payments

QUESTION: As provided in Public Law 101-162, the first reparation payments of $20,000 will be made to eligible internees on October 1, 1990. Will the Department be ready to release checks to the first 25,000 eligible people on October 1, 1990 ?

The Office of Redress Administration (ORA) expects to pay approximately 25,000 individuals in October, 1990. ORA's ability to do this depends, however, on two conditions:

1. Individuals who have been asked by ORA to return verifying documents do so in a timely manner, and
2. The full authorization ($500 million) is apportioned in the first quarter of 1991. Unless affected by an initial or final sequestration, it is expected that the full 1991 appropriation will be apportioned in the first quarter of 1991.

QUESTION: I understand that there may be more than 60,000 eligible recipients. Will the Administration propose a change in the funding level authorized for this program to allow payments to additional recipients identified as eligible?

ANSWER: Based on ORA's research to date, it does appear that there may be more than 62,500 eligible recipients for whom there is funding authorized. However, once ORA has conclusively verified that this is true, ORA will draft an amendment to increase the authorization level. The amendment will, of course, be subject to review by the Department and OMB.

QUESTION: Do you presently plan to have virtually all eligible recipients paid by the end of 1993?

ANSWER: We expect to have about 90 percent of all eligible individuals paid by the end of 1993. We expect that the last 10 percent of eligible individuals may be difficult to locate, which would consequently slow the payment process.

Drugs - Supply vs. Demand Reduction

QUESTION: In its request for additional resources, DEA presents a bleak assessment of its ability to make any "significant progress" against drug traffickers. And, recent statements by Jack Lawn, former DEA Administrator, and Robert Stutman, former Director of the DEA New York Region, suggest that emphasis should be shifted from law enforcement to public education and other forms of demand reduction. In fact, this was the very sentiment presented by over thirty Federal, State, and local law enforcement witnesses that testified before the Subcommittee in hearings held in South Carolina during February.

Given this assessment by persons long associated with drug law enforcement efforts, is there any real hope to assume that the increases DEA and other Justice Department agencies are requesting will have a significant impact on the Government's anti-drug efforts?

Should we be placing more emphasis and resources on drug demand reduction given the bleak enforcement picture presented by the DEA?

ANSWER: It is my belief that law enforcement groups should use their position of knowledge, respect and authority to educate our citizens to the dangers associated with the use of illegal drugs and steer them away from substance abuse to a drug-free life.

In addition, we should not forget that every drug-related investigation and the increased emphasis on user prosecution have a demand reduction aspect as well. Encouraging street level enforcement contributes greatly to the overall demand reduction strategies, serving as a deterrent to drug trafficking and abuse by raising the costs of drug use and trafficking. While significant and permanent demand reduction is the long-term answer, that will only be successful in an environment of strong law enforcement pressure as a deterrent to both the drug smuggler and the drug user until prevention and education programs take effect. I have said many times, if we want to lose the war on drugs, we should just leave it to law enforcement. By this, I mean we must pay equal attention to the demand side by reducing the consumption of drugs through programs of prevention, education, rehabilitation, and treatment, and holding the user accountable for a share of the economic and social costs of drug dependency. However, a sustained commitment to both the demand and supply strategies is essential if we are to be successful.

While demand reduction is not the primary responsibility of the Department of Justice, and the Department's activities are not identified formally under demand reduction in the budget, there are several direct demand reduction programs within the Department that I support and plan to continue. These include the efforts of DEA and FBI Demand Reduction Coordinators who have joined forces with the National Youth Sports Coaches and the Boy Scouts to develop and implement drug abuse prevention programs. Likewise, the Immigration and Naturalization Service's (INS) Border Patrol conducts its own drug awareness programs in public schools. The United States Attorneys (USA) were given responsibility for demand reduction activities in their districts in the spring of 1986. Generally, that responsibility has been delegated to the Law Enforcement Coordinating Committee (LECC) and many successful programs are underway. For example, the United States Attorney in Maine works closely with the Governor's Office in a community-based program, which has led to a second Statewide conference on drug abuse. The Federal and State multi-disciplinary strategy also included development of a televised "town meeting" on alcohol and drug abuse with follow-up workshops throughout the State. Using a task force approach that included representatives of all backgrounds, the United States Attorney's Office in the Middle District of Louisiana focused on drugs in the workplace and produced a 48-page booklet, "Drugs in the Workplace -- in the Middle District of Louisiana." In several States, United States Attorneys support Statewide demand-reduction efforts. In the Western District of Texas, both the United States Attorney and the LECC Coordinator are actively involved with the Texans War on Drugs and Just Say No Programs in the schools. The United

States Attorney's Office in the Western District of Tennessee runs an informal law enforcement speakers bureau for Memphis and Shelby Counties, training speakers and coordinating efforts with all of the local departments. The Bureau of Justice Assistance works closely with and supports the National Crime Prevention Campaign, featuring "McGruff the Crime Dog." The "Just Say No" campaign, which educates children about the dangers of drugs, includes a 23-minute McGruff video available at no cost to all law enforcement and educational institutions.

Administration's Proposals to Reduce Federal Spending

QUESTION: While your 1991 budget request for the Department of Justice has a net increase of $364 million, many of the requests for individual agencies with the Department include program decreases -- the FBI, INS, United States Attorneys, Community Relations Service, General Administration, and the National Institute of Corrections -- with the common justification of "meeting the Administration's reduced Federal spending targets."

Four of these accounts -- FBI, INS, United States Attorneys, and General Administration were the subjects of increased spending proposals by the Administration last year in its "Violent Crime Initiative."

What are we to make of programs that were a Presidential priority less than one year ago and this year are on the chopping block? Do these reductions represent a truer signal from the Administration as to its real priorities?

ANSWER: The war on drugs and the violent crime that drug trafficking engenders, continue to be major priorities of the Department and the Administration. Additional resources for annualization of resources in this area are requested in the 1991 budget for the four organizations listed above. Further, significant program increases for the war on drugs are requested in this budget, mostly in the Organized Crime Drug Enforcement (OCDE) appropriation.

However, the reality of limited financial resources has to be faced, and hard choices have to be made. All of the Department organizations listed above have programs that, though important, are of lower priority than the war on drugs or the violent crime resulting from drug trafficking. While cuts must be taken in these lower-priority programs, they do not signal changes in the Administration's priorities.

National Advisory Commission on Law Enforcement

QUESTION: Senator DeConcini has introduced legislation to implement the recommendations of the National Advisory Commission on Law Enforcement which would, among other things, provide Federal law enforcement personnel with locality pay, increase the entry level pay for agents, and

provide time and a half for administratively uncontrollable overtime (AUO).

Congress passed an increase in AUO at the end of the last session. We have seen the impact this is having on the various law enforcement agencies as a result of OMB's decision not to provide the monies for its implementation. Thus, $72 million is having to be absorbed by the INS, the FBI and the DEA in 1991.

What impact would the DeConcini bill have on the Department of Justice if enacted into law? How much would it cost the Department to implement the DeConcini bill?

ANSWER: The provisions of the DeConcini bill would implement the major recommendations contained in the final report of the National Advisory Commission on Law Enforcement, with certain modifications, based on its study of pay and benefits for Federal law enforcement officers. The Department had a key role in the work of the Commission, including membership on the Commission by the Attorney General, the Director of the FBI and the Administrator of DEA, as well as representation on the Commission staff which conducted the study that supported the report recommendations for enhancing law enforcement pay and benefits.

Accordingly, the recommendations are likely to assist the Department's law enforcement components in improving their ability to attract and retain the number and quality of employees necessary to carry out our increasingly complex and demanding law enforcement missions. The enactment of this legislation would allow agencies to address recruitment and retention problems where they exist for key law enforcement occupations by providing a number of benefit programs.

The Department estimates this legislation to cost the affected agencies a total of $254.4 million in 1991. The following table reflects these costs by agency. Costs of this magnitude would be difficult for the Department to absorb without funding relief.

Cost Estimate for S. 2250 in 1991
(In thousands of dollars)

Agency	Amount
Federal Bureau of Investigation	
Direct	$45,400.0[1]
Reimbursement (OCDE)	1,847.7
Drug Enforcement Administration	
Direct	18,825.9
Reimbursement (OCDE)	3,080.1

[1] Costs for the FBI exclude almost $11 million for the New York Demonstration project that the FBI is currently paying. New costs under S. 2250 of $3.4 million for associated benefits are also excluded.

Cost Estimate for S. 2250 in 1991 (continued)
(In thousands of dollars)

Agency	Amount
Immigration and Naturalization Service	
Direct	63,362.8
Reimbursement (OCDE)	1,280.4
Federal Prison System	93,571.5
United States Marshals Service	12,526.5
Office of Inspector General	747.8
Total	240,642.7

United States Marshals Service Construction and Renovation

QUESTION: The Department of Justice appears to be planning another multi-year building program in the United States Marshals Service (USMS). I see where you are asking that $12,653,000 remain available until expended for 115 courtroom holding cell renovations, prisoner detention areas, and the Foley Square courthouse elevator in New York.

How much is the Department planning to spend over how many years for this effort?

I understand that $5 million of this request is for the Foley Square project. Why is the Department of Justice expected to fund what looks to be a General Services Administration (GSA) funding item? Why didn't the OMB seek this money in the correct appropriation account?

ANSWER: The Department is planning to spend a total of $23,547,000 over a period of three years for the renovation and construction of prisoner holding cells adjacent to Federal courtrooms and in USMS district offices. The 1991 budget request includes $7,849,000 for these purposes. If this request is appropriated, it will fund the first multi-year building program in the USMS Salaries and Expenses appropriation in recent history. Of the $23,547,000, $11,916,000 would be used to construct 232 new and repair 57 existing courtroom holding cells, and $11,631,000 would be used to renovate 38 cellblocks in USMS district offices. Currently, an estimated 80 percent of these prisoner detention areas fail to meet Federal standards and, of these, 20 percent are in urgent need of renovation.

In addition to the amounts listed above, the Department is requesting $5 million in 1991 to construct a secure prisoner elevator in the Federal courthouse at Foley Square, New York. This is a one-time cost and would nonrecur in 1992. The secure prisoner elevator is needed to correct a dangerous situation in which prisoners are regularly transported to and from court on public elevators with judges and the general public.

The GSA has specifically denied funding for the Foley Square project, classifying it as an access restriction project and citing Chapter 7, paragraph 4C of the Compendium of Federal Buildings Real Property Related Services (FPMR 101-21) which states in part that "the use of architectural and other barriers, access restrictions, and controlled vehicular and personnel traffic flows" are services provided by the GSA on a reimbursable basis.

The GSA also cited the Memorandum of Agreement on court security among the USMS, the Administrative Office of the United States Courts, and the GSA, which states that contracting for court security officers and for the installation and maintenance of security systems in space occupied by the Federal judiciary is the responsibility of the USMS. The GSA's policy is that since USMS is responsible for security in space occupied by the Federal judiciary, the costs associated with projects such as the Foley Square prisoner elevator should be reimbursed by the USMS. The Department is, therefore, requesting the funds necessary to complete this important project in the USMS-Salaries and Expenses appropriation, so that it may be used to reimburse the GSA for this work.

Immigration and Naturalization Service
Employer Sanctions

QUESTION: On March 29, 1990, GAO released its report on the Immigration Reform and Control Act of 1986 (IRCA), which concluded that the law had caused widespread discrimination. The GAO recommended that the INS law's increase requirements in order to reduce discrimination.

Do you agree with this recommendation and, if so, what amount of funds are you requesting for this purpose?

ANSWER: As you know, section 274A(k) of IRCA requires that a special task force be formed to review the General Accounting Office's (GAO) report and to make appropriate recommendations to Congress. In accordance with the statute's requirements, I have appointed a task force, chaired by Assistant Attorney General for Civil Rights John Dunne and including as members the Chairman of the Equal Employment Opportunity Commission, the Chairman of the United States Commission on Civil Rights, the Commissioner of the Immigration and Naturalization Service, the acting Director of the Office of Special Counsel for Immigration Related Unfair Employment Practices, and the Director of the Office of Policy Development, Department of Justice.

During Senate testimony on April 21, Chairman Dunne had committed to Senator Kennedy, Chairman of the Immigration Subcommittee of the Senate Committee on the Judiciary, that the task force would submit its recommendations to the Senate as quickly as possible, hopefully within 120 days. This task force held its first meeting on May 2.

The Immigration and Naturalization Service will conduct its assessment of the GAO Report through the task force appointed by the Attorney General and will assist in the preparation of its recommendations. We are continuing to explore modifications of document requirements, better methods of verification, and improved public education strategies as we review the operation of our programs.

The Office of Special Counsel is currently leading Administration efforts in anti-discrimination education. We are involved in the formulation of those educational materials and will continue to do all we can to support those efforts. INS has already spent about $800,000 on anti-discrimination education in 1989. The program will be increased in the future. INS has requested $884,000 in the 1991 budget to combat sanctions-related employment discrimination.

Public Law 101-238 made State Legalization Impact Assistance Grants, administered by the Department of Health and Human Services, available to States for their use in anti-discrimination education. INS has met with State representatives to provide them with instructional materials and offer assistance in their efforts to inform the public. A series of public meetings in Texas and Florida, sites of allegedly high incidence of IRCA-related discrimination, will be conducted by INS and Office of Special Counsel representatives in the near future.

QUESTION: When will the education effort begin and end?

ANSWER: The Service has been educating the public about IRCA since the enactment of the law. From the start, the Service's educational objective has been to achieve maximum voluntary compliance by giving employers the opportunity to learn about and comply with the law, including essential information about the law's anti-discrimination provisions. INS continues that educational effort today.

QUESTION: How will it be carried out?

ANSWER: The method of addressing any needed modifications of the employer sanctions program has been a matter of constant review within the INS, and we continue to assess the program. We developed several elements of our enforcement strategy, including the General Administrative Plan (GAP), the reliance on lead-driven investigations, and selection of targeted industries in cooperation with recommendations that we received from, among others, the GAO review team.

The Service is currently exploring several adaptations of our procedures to respond to the concerns raised by the GAO report. We are working with the Social Security Administration as we assess different means of creating more secure documentation and as we evaluate alternative techniques for document verification. Naturally, implementation of any or all such recommendations would depend upon the final recommendations of the Task Force and approval by the Congress.

Border Patrol

QUESTION: The Border Patrol recently established stations in the interior of the United States, for example in Roseburg, Oregon and Billings, Montana. What is the INS's rationale for establishing interior stations? Given limited resources, shouldn't the priority be to patrol along the border?

ANSWER: In response to the Immigration Reform and Control Act of 1986, the Border Patrol temporarily established a number of interior stations in an effort to provide an increased level of employer sanctions education and the subsequent enforcement of those laws. The Border Patrol is now in the process of systemically realigning those interior station resources to the immediate border area. The priority of the Patrol is to perform its mission in the detection and prevention of the smuggling and illegal entry of aliens into the United States. The operational activities necessary to achieve this mission will be primarily carried out within 100 miles of the International Boundary while maintaining temporary and permanent checkpoints on highways providing egress from the border.

QUESTION: Last year problems arose when the Border Patrol exceeded its staffing budget which contributed to INS having to transfer funds. What is the number of Border Patrol agents on board as of March 1, 1990? What caused the problem last year? Please explain how it happened, what steps were taken as a result, and what controls have been put in place to make sure it does not happen again?

ANSWER: The unexpected influx of illegal aliens in 1989 into the South Texas border area resulted in the dedication of a large amount of resources to this illegal immigration problem, which could otherwise have been used to maintain the higher Border Patrol staffing levels. The Service put a hiring freeze into effect in February 1989 and by the end of year the agent on-duty level had dropped to 3,857. The on-duty agent force was 3,788 on March 1, 1990. However, as of April 17, 1990, the on-duty force was 3,825. The Patrol will continue to maintain approximately this level of agent staffing throughout the remainder of 1990.

Several steps have been taken by the Service in 1990 to control the hiring of all personnel nationwide. The approval for all hiring within the INS is now centrally controlled by the program Headquarters staff. This procedure will ensure a uniform and consistent policy for hiring on a nationwide level. In addition, the Service has established at the Headquarters level an office dedicated to maintaining staffing accountability and control procedures for the hiring of INS personnel. The finance and budget offices are responsible for ensuring the integrity and financial solvency of the operational programs hiring and staffing actions. These recently implemented control changes will assist in reducing the possibility of another hiring situation such as the one that occurred in 1989.

QUESTION: Many Federal, State and local law enforcement agencies receive asset forfeiture funds from the war against drugs. How much did INS receive in 1989? What was the money used for? What are the priorities for disbursement of these funds?

ANSWER: The final INS Assets Forfeiture Funds budget for 1989 was for $5,950,000. Of this budgeted amount INS actually spent $4,699,019. These funds were expended in the following categories:

Asset Specific Expenses	
Asset Management Expenses	$ 555,351
Third Party Interests	64,353
Subtotal, Asset Specific	619,704
Program Related Expenses	
ADP	371,193
Retrofitting	3,698,213
Training and Printing	9,909
Subtotal, Program Related	4,079,315
Total	4,699,019

The asset specific expenses are a higher priority because they are directly related to the seizure and forfeiture of conveyances used in the violation of the Immigration and Nationality Act. The program related expenses are capped by Congress but are extremely important to the overall efficiency and management of the INS' Asset Forfeiture Program.

QUESTION: What is the Border Patrol staffing level you anticipate for the end of this fiscal year? How does this compare to previous years staffing levels?

ANSWER: INS anticipates having a staffing level of 4,496 (3,865 agents and 631 support) at the end of fiscal year 1990. This represents 226 new hires. The following compares 1990 and several previous years staffing levels:

Fiscal Year	Agents	Support	Total
1986	3,228	449	3,687
1987	3,180	463	3,643
1988	4,074	590	4,664
1989	3,821	614	4,435
1990 est.	3,865	631	4,496

Passenger Motor Vehicles

QUESTION: In 1984, with a budget half the size of the one proposed for 1991, INS proposed to purchase 400 passenger motor vehicles. Seven years later, with a budget more

than doubled, INS is proposing to procure 504 passenger motor vehicles. Yet, the Subcommittee hears horror stories regarding the condition of INS vehicles along the Southwest border.

Please provide for the record, for 1984 through 1991, the total number of vehicles purchased by INS, by program, and include vehicles considered passenger motor vehicles and others. Also include the number of seized vehicles brought into INS' fleet each fiscal year for 1984 through 1991.

ANSWER: Following is a breakdown of vehicles brought into INS' fleet from 1984 through 1989 by program. It also includes planned purchases for 1990 and 1991. These figures represent an update of those presented in the budget request.

Vehicles Purchased or Planned by Fiscal Year and Program

Program	1984	1985	1986	1987	1988	1989	1990	1991
Inspections	13	...	1	3	44	13	...	...
Border Patrol	341	613	509	247	885	368	106	355
Investigations	93	30	20	113	657	105	228	...
Anti-Smuggling	8	5	...	36	15	43	30	...
Detent & Deport	52	78	37	38	79	145	21	57
Adjud & Natz	...	...	2	5	21	...	25	...
Refugee & Over	3	1	...	3	...	...	...	...
Training	...	...	...	...	...	18	6	...
Intelligence	...	1	...	...	...	...	...	...
Field Mgmt	2	2	...	4	14	...	...	...
Legal Proceed	...	...	3	...	...	...	...	...
Executive Dir	...	1	2	5	26	...	...	...
Adm Services	...	...	1	106	11	...	...	...
Total.....	512	731	575	570	1,721	723	429	412

Vehicles Forfeited or Planned by Fiscal Year and Program

Program	1984	1985	1986	1987	1988	1989	1990	1991
Inspections	7	21	25	34	12	14	10	16
Border Patrol	30	22	55	85	62	68	26	52
Investigations	30	75	65	71	32	65	51	102
Anti-Smuggling	66	83	101	101	42	79	19	38
Detent & Deport	3	11	11	11	7	10	7	15
Adjud & Natz	...	...	2	2	1	1	...	...
Refugee & Over	...	5	2	...	...	...	...	...
Data & Comm	...	...	...	...	1	...	...	...
Intelligence	...	1	...	1	...	...	...	...
Field Mgmt	2	28	5	11	...	...	...	...
Legal Proceed	...	1	...	1	...	...	...	...
Executive Dir	10	6	2	3	1	...	...	...
Adm Services	...	2	1	3	...	...	...	...
Total.......	148	255	269	323	158	237	113	223

QUESTION: Why has this Administration and INS management placed such a low priority on maintaining its vehicle replacement program?

ANSWER: The Service has not placed a low priority on maintaining its vehicle replacement program. However, a number of factors have been at work which have at times limited the level of vehicles purchased.

Certain situations have developed which have called for a diversion of resources from vehicle purchases. For example, during 1989 the Service, in response to a worsening situation in Central America, had to enhance its presence on the South Texas border so as to allow for the processing of increasing levels of asylum claims and to serve as a deterrent to attempts at illegal entry. This increased level of operations in South Texas had to be paid for within existing resources.

The Service's 1991 request for vehicle resources will provide for a responsible program of replacement for those vehicles that are no longer economical to maintain. It is of sufficient size to address the needs of the Border Patrol and Detention and Deportation programs and ensure the continued efficiency of operations in those programs.

Refugees

QUESTION: What action is INS taking to accommodate the surge in Russian refugees over the past several months?

ANSWER: As of the end of March 1990, the Washington Processing Center (WPC), the administrative support center for Moscow refugee processing, had received approximately 203,000 registrants for refugee interviews during 1990. It is important to remember that since only Soviets 21 years or age and older are required to fill out preliminary questionnaires the actual number of registrants for interview could well be double this total or 406,000 (assuming an average Soviet family consists of four individuals, two adults and two children under the age of 21 years).

During this same period, INS Moscow has processed 19,274 persons for refugee status in Moscow. Of this total, approximately 7,800 Soviets have been approved for refugee status, with those denied offered entry to the United States under the Public Interest Parole Program initiated by the Department on December 8, 1988.

Between February 1 and March 24, 1990, 5,463 individuals were interviewed for refugee status in the United States under the Lautenberg Amendment. Of that total, 1,752 were Soviet Jews, with 1,590 or 91 percent approved. For Soviet Evangelicals, 264 were interviewed and 236 or 89 percent approved. Twelve Ukrainian Catholics or Orthodox were processed and all were approved. Overall, 91 percent of all category cases were approved. The approval rate for all Soviets interviewed during February was 40 percent.

Vienna-Rome Pipeline. As of March 31, INS Rome processed 36,252 Soviets for refugee status during 1990, with an approval rate of 99 percent or 36,183 approvals. As of mid-March, INS has interviewed virtually all Soviets in the Vienna-Rome Pipeline.

Currently, approximately 9,029 approved Soviet Refugee applicants are in Rome waiting to travel to the United States, but do not yet have United States sponsors or travel arrangements. These post-interview processing activities are the responsibility of the Department of State and the involved voluntary agencies.

QUESTION: Please give an overview of INS refugee processing worldwide.

ANSWER: The 1990 estimated worldwide workload for refugee applications is 180,000 received, 150,000 completed, 115,349 uncompleted at year's end. The worldwide 1990 refugee ceiling is 125,000.

Under the Orderly Departure Program established and implemented in the Bangkok District, on-going interview trips are made on a biweekly basis into Ho Chi Minh City, Vietnam. In 1990, 26,500 of the 125,000 refugee ceiling are available for use for this program. Refugee numbers available during 1990 for Indochinese in first asylum countries total an additional 25,000 of the 125,000 ceiling.

The 1990 estimate for the number of humanitarian and public interest paroles is approximately 4,000 of the 125,000 ceiling. Under the Vietnamese Longstayer program administered in Bangkok, Thailand, an additional 1,000 persons will be paroled into the United States. These are in addition to the 125,000 ceiling.

The 1990 workload for asylum applications processed is estimated to be 62,000 received, 53,000 completed, and 84,993 pending backlog.

The Alien Migration Interdiction Program continues to provide an outstanding service under the Presidential Proclamation establishing the program. Since the inception of the program, 364 boats have been intercepted, 21,450 Haitians have been returned to Haiti and six have been transported to the United States for Asylum proceedings.

Border Patrol Canine (K-9) Program

QUESTION: In 1989, what results were obtained as a result of the canine units detecting concealed drugs? How many seizures were attributable to the units? What quantities of drugs were seized?

ANSWER: The following 1989 narcotic seizure statistics were attributed to the Border Patrol K-9 units.

Type of contraband	No. of Seizures	Amount	Value
Marijuana (lbs)	1,570	114,017	$88,129,822
Heroin (oz)	41	67	1,337,361
Opium (oz)	1	4	2,293
Cocaine (oz)	181	126,290	219,065,609
Hashish (oz)	5	16	28,764
Dangerous Drug Pills (units)	54	57,839	449,873
Other	190	...	473,144
Weapons	214	272	487,094
Vehicles	794	696	5,359,157
Currency	192	...	3,950,990
Total	3,242		$319,284,107

The Border Patrol made a total of 5,441 drug related seizures in 1989. The dollar value of drugs and contraband seized by the Border Patrol was $1,191,505,131.

Inspections User Fee

QUESTION: The current User Fee program is limited to fees collected at airports and seaports. What is your opinion of the advisability of a land border inspection fee to provide resources to address the workload problems?

ANSWER: A vehicle fee would generate sufficient funds to significantly enhance our staff and facilities at land border ports-of-entry. Additional revenues can also be generated by charging administrative fees for the issuance of documents and performance of many services provided at land border ports-of-entry (I-44 Mexican Border Visitors Permits, I-68 Northern Border Boat Permits, I-84 Arrival and Departure Records).

QUESTION: From time to time there have been discussions of the possibility of extending the inspections user fee to passengers arriving from Canada, Mexico, and the nearby islands. Approximately how many persons would be affected by such a change and what additional revenue would be generated?

ANSWER: Approximately 15 million passengers would be required to pay the $5.00 fee, generating an additional $75 million annually.

QUESTION: I notice in your budget submission that INS is requesting operating levels of $110 million for the new Inspections User Fee Account and $40 million for the Examinations Fee Account. This Committee recently approved reprogramming levels of $115 million and $120 million respectively, for those two accounts. In light of recent complaints regarding the delivery of services for these two accounts, are the operating levels in your budget request/receipts realistic?

ANSWER: In view of the reprogramming actions which have affected the User Fee Account and the Examinations Fee

Account, the 1991 operating levels for these accounts are being reviewed based on higher receipts than originally anticipated.

The operating levels of these programs are closely correlated with expected receipts. The Department of Justice will advise the Appropriations Committees of significant changes to receipt estimates as displayed in the 1991 budget as appropriate.

Airport Inspections Delays

QUESTION: The $5 INS User Fee for passenger processing was designed to ensure that the travelling public, who are the ones paying for INS passenger processing, are the beneficiaries of the program. However, I am aware of frequent delays at this country's larger airports--delays well in excess of an hour despite the fact that over $105 million is dedicated to this account in 1990; moreover, in 1991 additional collections of fees resulting from increased foreign travel are anticipated to be $110 million.

What can you tell us about these delays and shortage of inspection agents?

ANSWER: Immigration inspection delays at airports are caused by increased travel, airport design, airline scheduling and INS staffing limitations. According to Department of Transportation and Air Transport Association predictions, international air travel was expected to increase this year by six percent to seven percent. In addition, several of the larger United States airports were expecting newly-constructed facilities to become operational during the fiscal year. A reprogramming of additional Inspections User Fee receipts approved by Congress on March 20, 1990, adds 360 positions and $11,973,000 to the 1990 operating level of this program. These additional resources, with the new facilities, should enable INS to meet the increasing demand for immigration inspections.

Bureau of Prisons
Prison Capacity and Overcrowding

QUESTION: The 1991 budget shows inmate population in Federal prisons at 167 percent of capacity. The Bureau's goal is to reduce the crowding rate to 130 percent of capacity, although in previous years the Bureau of Prison (BOP) goal was to reduce crowding to 110 percent. What is the actual capacity of the Federal Prison System? How is this computed? How do such computations differ from those made by the States?

ANSWER: As of May 31, 1990, the Federal inmate population of 56,686 is being housed in 66 facilities with a rated capacity of 33,505. Rated capacity is based on standards for physical space per inmate which were first developed by the American Correctional Association (ACA) during their work on prison accreditation. For single rooms the ACA standard is "[o]nly one inmate occupies a room or cell designed for single occupancy which has a floor area of at least 60 square feet, provided inmates spend no more than 10 hours per day locked in. When confinement exceeds 10 hours per day, there are at least 80 square feet of floor space." For multiple occupancy rooms the standard is "a minimum floor area of 50 square feet per occupant in the sleeping area." The American Correctional Association standards are used by most correctional systems to compute rated capacities.

Many States use rated capacity, but some use "operational capacity" (the number of inmates that can be accommodated based on a facility's staff, existing programs and services) or "design capacity" (the number of inmates that planners or architects intended for the facility), and some States measure capacity in more than one of these ways. Accordingly, the Department's Bureau of Justice Statistics, in measuring State inmate population as a percent of capacity, gives two figures, based on the highest and lowest capacities reported by the State.

QUESTION: How did BOP determine it could handle an inmate population at 130 percent of its rated capacity? What type of support was used to show the costs and benefits of population rates above and below this level? Is this in fact an optimum rate? What is the basis for determining that 130-percent crowding is safe and humane? If we can house 30 percent more than capacity and still have safe and humane facilities, why don't we consider this to be the capacity of our facilities and adjust our space growth accordingly?

ANSWER: In arriving at the thirty-percent goal, the BOP considered all reasonable alternatives which would reduce the capital expenditures for prison expansion while maintaining safe and humane facilities. The goal acknowledges the reality of the Federal budget deficit and BOP's experience and professional judgment in managing overcrowded facilities. The goal should not be considered an optimum rate and can only be considered acceptable when coupled with the increased levels of staffing. Over the last three years, 7,000 additional positions have been approved or requested to assist Federal prisons in their efforts to cope with overcrowding.

Whether an overcrowded prison or prison system is safe and humane depends on more than simply the degree of crowding. It also depends on the competence and professionalism of management, the use of capable staff, the availability of work programs and other activities that keep inmates occupied productively, the provision of adequate health care, and so on.

Additionally, the goal to reduce overcrowding to 30 percent does not imply an across-the-board reduction in all facilities. Experience has shown that, in order to maintain safe and humane facilities, the system can accept a greater level of overcrowding in the lower security institutions than in high security institutions. The maximum security United States Penitentiary at Marion, Illinois, for example, should not be overcrowded at all.

QUESTION: What types of problems has the population rate of 167 percent caused BOP? Has it led to increased violence? Deterioration of mission? Increased recidivism? Other? How are these determined and what types of documentation are available?

ANSWER: There is no evidence that there has been any increase in inmate violence or recidivism related to increases in the Bureau's population. Institution staff report, however, that existing resources are strained by the population increases. Under the current crowding levels, it is more difficult to deliver inmate care such as food, medical and case management services and more difficult to insure inmates have meaningful and productive work activities.

QUESTION: BOP maintains that only one percent of all inmates escape. If this is based on 50,000 inmates, doesn't that work out to about 500 escapes per year? Where are these escapes occurring, e.g., minimum security? Could you provide the exact number of escapees at each security level for the last five years? What is BOP doing to make escapes less likely?

ANSWER: During 1989, 90 inmates escaped from the Federal Prison System. Below are escape statistics by security level for the last five years.

	1985	1986	1987	1988	1989
Minimum	136	123	94	90	82
Low	19	13	10	9	3
Medium	1	3	13	6	2
High	0	0	0	1	3

BOP continues a proactive approach to preventing inmate escapes and escape attempts by upgrading technology such as video cameras, monitoring and deterrent devices; increased perimeter security; increased staffing levels; and review and modification of the inmate classification system. Additionally, BOP continues to work closely with FBI, USMS and other law enforcement agencies to gather information to prevent escapes or assist in the capture of escapees.

Managing BOP's Prison Expansion Program

QUESTION: The Bureau of Prisons is in the midst of a tremendous prison expansion program that will involve spending billions of dollars in construction costs and operational expenses in the coming years. In the wake of financial scandals at the Department of Housing and Urban

Development, criticisms of the Government's handling of the savings and loan crisis, and costly military weapon systems that don't work, taxpayers are losing confidence in the ability of the Government to spend their taxes wisely. Describe in detail the process and procedures used by BOP to plan for additional prison facilities.

ANSWER: BOP's formal planning process for capacity expansion is the same process used to plan for the Federal budget. Its capacity expansion plan and the budget must be connected because of the magnitude of the resources required to keep pace with the projected growth of the Federal inmate population and to reduce overcrowding to more manageable levels.

The Federal Prison System Resource Planning Process, presented below, outlines the key decision points. Key decision-makers (the Director and Executive Staff of BOP, my office, the Director of the OMB, the President, and the Congress) are also noted. Goals, objectives, the alternatives considered in meeting objectives, workload estimates, and the planned courses of action are reviewed, analyzed, and documented in each stage of the process. Volumes of support documentation associated with the budget process are available.

Federal Prison System
Resource Planning Process

MAJOR BUDGET THEME DEVELOPMENT. In November, the Assistant and Regional Directors of BOP identify potential major budget themes for the fiscal year that will begin two years from the past October. The budget themes are developed after seeking input from Wardens, Regional Administrators, and Central Office Program Managers.

EXECUTIVE STAFF SELECTS BUDGET THEMES. In January, BOP's Executive Staff selects major budget themes. Program Managers begin development of the resource requirements associated with these initiatives.

POPULATION PROJECTIONS REVIEWED. BOP's population projections are reviewed and updated to include the impact of recently enacted legislation as well as recent trends in prosecutorial and enforcement practices.

CAPACITY EXPANSION PLAN UPDATED. BOP's capacity expansion plan, which projects requirements six years into the future, is reviewed and updated to reflect the current status of new construction projects, to include revised population projections and to consider trends in the geographic and demographic distributions of the inmate population.

CURRENT SERVICES LEVEL ANALYZED. BOP determines the mandatory increases (i.e., annualization of prior program increases, inflation, etc.) required to maintain current services.

LONG-RANGE GOALS AND MAJOR OBJECTIVES REVIEWED. Program managers review and update long-range goals and major objectives, considering actual workload experience, key indicators, anticipated appropriations, population projections, the capacity expansion plan and approved program changes.

SPRING PLANNING ESTIMATE INSTRUCTIONS ISSUED. In March, the Department of Justice provides technical instructions for preparation of Spring Planning Call for program authorizations and budget estimates.

SPRING PLANNING ESTIMATES PREPARED. In April, BOP prepares Spring Planning Estimates which include a program by program analysis of the agency's long-range goals, major objectives, workload and accomplishments, funding requirements, justification of program changes and other special budget analyses. The Spring Planning estimate covers the budget year plus four subsequent years.

DEPARTMENT OF JUSTICE REVIEW. The Department of Justice Budget Staff analyzes BOP's Spring Planning estimates and recommends funding levels and identifies other critical issues.

DEPARTMENT OF JUSTICE HEARING AND APPEAL PROCESS. The Department of Justice conducts a hearing providing the Director of BOP with the opportunity to defend the agency's Spring Planning estimates and respond to outstanding issues. The Director may appeal Budget Staff recommendations.

ATTORNEY GENERAL APPROVAL. The Attorney General reviews the budget submission and considers the testimony of the Director and establishes funding levels.

OMB BUDGET INSTRUCTIONS ISSUED. The Department of Justice issues instructions on the preparation of the budget estimates to be submitted to OMB. These instructions supplement the OMB Circular No. A-11, Preparation and Submission of Budget Estimates.

PREPARATION OF OMB BUDGET SUBMISSION. In September, BOP prepares estimates which reflect the Attorney General's allowance. The agency's long range goals, major objectives, workload and accomplishments, justification of program changes, and funding level requirements are revised.

OMB HEARING. OMB conducts a hearing, providing the Director of BOP with the opportunity to defend the agency's budget estimates and respond to critical issues.

OMB REVIEW AND APPEAL PROCESS. The OMB reviews BOP's budget estimates and recommends funding levels. The Director of BOP, through the Attorney general, may appeal the decision. When all issues are resolved, the final decisions represent the President's budget request.

CONGRESSIONAL BUDGET INSTRUCTIONS ISSUED. The Department of Justice issues instructions on the preparation of the budget estimates to be submitted to the Congress.

CONGRESSIONAL BUDGET SUBMISSION. The Federal budget is publicly presented and thus available for evaluation in terms of its worth and its likelihood to reduce overcrowding while making efficient use of Federal resources.

Internal controls included in the process are the analysis and recommendations by the Department of Justice's Budget Staff, OMB, as well as the formal testimony of the Attorney General and the Director of BOP. The budget is also subject to intense scrutiny by both Houses of Congress.

For 1991, the Bureau projections of its long-range capacity requirements based on a 5-year projection of inmate population can be found on pages 8 through 12 of the Congressional Budget submission under the Buildings and Facilities appropriation.

As the Director of BOP has testified in the past, projecting prison population is not an exact science. While the Bureau has refined its projection methods to include computer modeling, legislative changes and administrative policy shifts can have a dramatic impact on the projection. Recent analysis of Federal court caseload estimates presented at the March 1989 Judicial Conference indicates that the Federal inmate population growth will accelerate and it is now projected to reach 95,100 by 1995. As noted in the submission, we believe this projection is still conservative for three reasons. First, it is based on the Judicial Conference's low growth scenario in future trends in court convictions. Secondly, it excludes the potential impact of the President's recent proposals to enhance penalties for firearm violations and restrict plea bargaining. Third, it does not include increased assistance to USMS in housing Federal pre-trial detainees.

QUESTION: With contractors and subcontractors clamoring for a piece of the prison construction action, what internal controls are in place in the Bureau to ensure that contracts are awarded on the basis of merit, equity and fairness?

ANSWER: In accordance with the Federal Acquisition Regulations (FAR), BOP awards contracts for construction projects by sealed bid. Bids submitted by contractors are sealed and placed in a lockbox until a specific date and time set for bid opening. The bids are opened in public and the results of the bids are announced. Award is then made strictly on the basis of price and price related factors. The objectivity of this method ensures that all contractors are treated fairly and equally.

Prior to contract award, the contract file goes through a review process to ensure that it is in compliance with the

FAR and that all documentation is in order supporting the intended award. The contracting officer who has opened the bid, performs the initial background check on the contractor submitting the low bid to determine contractor responsibility, i.e., the contractor has the financial resources to perform the contract and has an established record of business integrity. The contract is then submitted to the supervisory contracting officer for review.

After the supervisory review, the contract is then forwarded to the Bureau's Office of General Counsel for review and to ensure that the contract is legally sufficient. As a final review, the contract is then submitted to the Department of Justice's Office of Procurement Executive. The contract files are also subject to program review audits, regional audits, Inspector General audits, and General Accounting Office audits. There is also an established fraud, waste and abuse hotline in operation.

QUESTION: How does BOP monitor construction contracts to ensure that the work is of acceptable quality, on schedule, and within budget? Please provide the original cost estimates of all the facilities you have brought on line in the last five years and the original cost estimates at the time the project was authorized by the Congress.

ANSWER: A combination of in-house staff and contract services are utilized to manage projects through both design and construction phases, including both cost and schedule controls. Specific elements of this process related to these controls include professional cost estimates at various phases of the project, on-going schedule up-dates, and a high level of on-site in-house personnel and contract support staff during the construction phase.

In the past five years, BOP has brought on line seven institutions. The combined budget estimate and appropriation for these facilities was $263,365,000. The completed construction cost of these seven projects was $276,181,810 which represents a cumulative overage of only 4.9 percent. These seven institutions and their budget estimates and construction costs are as follows:

Project	Budget Request	Construction Cost
Phoenix	$24,120,000	$24,430,187
Oakdale	17,000,000	19,400,318
Los Angeles	40,000,000	40,931,852
Sheridan	53,320,000	50,946,953
Fairton	36,450,000	46,765,500
McKean	49,300,000	49,925,000
Marianna	43,175,000	43,782,000
Total	263,365,000	276,181,810

Individually, the completed construction cost of projects have ranged from 4.5 percent under budget to 28.3 percent over budget. The more serious overages were a result of particularly difficult site and bidding climate conditions. All overages were absorbed from existing resources.

QUESTION: Recently, the Bureau has changed its long-standing policy of building relatively small prisons in favor of building large prison complexes. Are there economies of scale to be gained from building and operating large prison complexes instead of smaller prisons? If so, please describe the economic advantages and cite any internal or independent studies that support this proposition.

ANSWER: BOP has not changed a long-standing policy of building single facilities at a site. However, grouped facilities strategically located in high population areas of the country as correctional complexes tend to be cost effective and save precious time in bringing facilities on line. BOP plans to continue to construct individual facilities in various parts of the country where the inmate population does not justify larger complexes, although the design capacity of medium security facilities has been increased from approximately 500 to approximately 750.

Based on our years of experience in building and operating correctional facilities, we believe there are economies of scale to be gained by locating and operating more than one facility on a site. The economies we anticipate relate to the larger population and double celling now planned for medium and low security institutions and in the sharing of site development, utility systems, and various service functions.

The economies created during development of correctional complexes will result in not only budgetary savings but also in the time savings during the site acquisition, impact studies, design and construction at one site versus four sites. From the initial site selection to the institution activation, it currently takes approximately three to four years. In this same time period we will be able to activate a four-facility correctional complex.

QUESTION: BOP projections overall seem to indicate that the construction of correctional complexes seem to be the cheapest way to go overall. Why are we still considering any other option especially considering the large number of cells you get from one effort?

ANSWER: We believe that development of complexes will result in some budget, time and bedspace benefits. However, there are other factors that must be considered when siting correctional institutions. BOP uses inmate demographics to target sites for new facilities, that is, in addition to other factors we look at where the inmates are coming from, their release destination and the security requirements as part of our planning and siting process.

We plan to strategically locate correctional complexes around the country to accommodate those Federal judicial districts which are producing the greatest number of sentenced offenders in need of the full range of security level institutions. The northeast, southeast and western regions of the country have been targeted for complexes and additional prison construction. Correctional complexes are in the planning and development stages at Florence, Colorado; Allenwood, Pennsylvania; northeastern Ohio; Butner (Raleigh-Durham), North Carolina; central Florida; Houston, Texas area; and Sacramento, California area.

More than sixty percent of the Federal inmate population is classified in the minimum, low, and medium security levels. Less than 10 percent are classified in the high security level, and 25 percent are in administrative (pretrial or awaiting sentencing) category.

The demographics of the inmate population as it relates to security level and to geographic release locations indicates that single institutions will be required at various locations. To utilize complexes alone would require the disproportionate relocation of some inmates away from their families and community ties.

QUESTION: Traditionally, the BOP position has been that it can build and operate prisons more economically than the private sector. Recent budget requests recommended funding to lease two private prisons. What has happened to change BOP's mind that this might be a more economical way of running prisons?

ANSWER: The 1990 appropriation for BOP includes authority for one pilot leasing project. We are proceeding with that project. The results will be an indication of the feasibility of the leasing concept.

Housing Criminal Aliens

QUESTION: Criminal aliens are being detained in Bureau of Prisons facilities and in State and local jails. How many criminal aliens who have been previously ordered deported subsequently are encountered by the BOP?

ANSWER: Excluding Mariel Cubans, BOP currently houses 235 criminal aliens. Of this total, over half (151) are housed at the Federal Deportation Center (Oakdale II), Oakdale, Louisiana, a facility jointly operated by the BOP and the Immigration and Naturalization Service (INS). Thirty-three cases are housed at our Federal Detention Center (Oakdale I), and the remaining 51 cases at the Oakdale facilities are being held for purposes of exclusion. INS indicates that, of those cases ordered deported, the majority being held are appealing the decision or awaiting final arrangements to effect the deportation.

QUESTION: Are there ways to get deportable aliens out of Federal prisons sooner? How long does the average deportation proceeding take? Are they started before the prisoner's sentence expires?

ANSWER: Current criminal statutes do not allow for early release of sentenced prisoners for purposes of deportation under most circumstances. Section 242A of the Anti-Drug Abuse Act of 1988, Public Law 100-690, would allow such a release for aliens convicted of aggravated felonies, but only upon the written request of the chief prosecutor or the judge in whose jurisdiction conviction occurred. See 8 U.S.C. §1252a(d)(2). Since releasing prisoners from their sentences is the only method to deport them sooner, changes in sentencing statutes would be required.

The Immigration and Naturalization Service (INS) does not keep statistics or track the average time a deportation proceeding takes. Under ideal conditions, proceeding can take as little as one day. Conversely, some cases take several years.

Deportation proceedings are started before the prisoner's sentence expires. Sentenced aliens, who are targeted for deportation, are transferred to the Oakdale facilities several months prior to the end of their terms in order to begin the deportation process.

Prison Alternatives -- Halfway Houses

QUESTION: The purpose of the halfway house, or community-based treatment center, is to reintegrate the offenders into the community, get job experience for the offender, allow the offender to earn some resources, and reacquaint the offender with his or her family. What specific requirements does BOP place on the operators of halfway houses in terms of inmate supervision, educational services, health services, and social services?

ANSWER: All Federal halfway house contractors have specific requirements to fulfill as outlined in the Statement of Work. Regarding inmate supervision, contractors are required to monitor inmate activities through: approved programs, daily sign-out procedures, periodic calls and visits to the inmate's place of employment, urine and alcohol surveillance and coordination of supervision activities with probation and other community agencies. Depending on the needs of the inmate, educational, health and social services may vary. Generally, inmates are required to provide for their own medical care as well as any educational programs they might choose. When there are financial concerns related to medical and educational issues, contractors will work with a variety of community social agencies to meet those needs.

QUESTION: How does BOP monitor the operation of halfway houses? In particular, describe how BOP provides a quality assessment of each facility and the criteria or standards used to assess halfway house performance.

ANSWER: Halfway houses are monitored by BOP Community Corrections staff regularly, both on a scheduled and unscheduled basis. Halfway houses with a daily population of ten or more Federal inmates are fully monitored once a year with three interim monitorings. Halfway houses with less than ten Federal inmates are fully monitored once every eighteen months with two interim monitorings. The Bureau has developed an extensive inspection document which correlates with the Statement of Work. The full monitoring reviews 100 percent of all contract requirements. The interim monitorings will review any deficiencies found during the last monitoring plus life/safety, inmate accountability, sanitation and any other issues which might be of concern to BOP. In addition, halfway houses are also periodically monitored by Regional and Central Office staff to insure compliance with Federal procedures.

QUESTION: Please provide for the record, BOP's cost for halfway house contracts over the last three years. How does BOP ensure the reasonableness of expenses charged to BOP contracts by halfway house operators?

ANSWER: The average daily per capita costs for Federal inmates in halfway houses over the past three years are as follows: 1989 - $29.60, 1988 - $29.24, 1987 - $28.51. The contracting officer ensures reasonable halfway house costs by conducting a cost/price analysis, a market survey to compare prices in the designated area and through competitive bidding.

Other Alternatives to Prison

QUESTION: BOP's budget describes an extensive use of alternatives. For example, you are requesting $1 million to provide electronic monitoring to 250 inmates. Are there inmates currently housed in Federal facilities that pose little or no danger to the community that could serve the remainder of their sentence in the community? What type of inmates are we talking about and how many are there?

ANSWER: The Bureau of Prisons already permits certain qualified, non-dangerous inmates to serve the last portion of their sentence under supervision in the community. These include offenders who need a pre-release transition program at the end of their sentences, offenders who the Federal courts determine need more than probation and less than full institution confinement, offenders who are under probation or parole supervision but need more intensive services/programs and offenders who are committed directly from the court, generally serving short sentences.

The President's National Drug Control Strategies have endorsed the concept of intermediate sanctions in sentencing that fall short of incarceration but are more stringent and effective than unsupervised probation. Intermediate sanctions should be viewed as an alternative to probation instead of an alternative to incarceration. The Department of Justice is currently studying the effectiveness of various intermediate sanctions in the States.

QUESTION: What have been the results of your limited use of electronic surveillance? Does BOP anticipate an increase in the number of inmates under this program?

ANSWER: The Department's experience with electronic monitoring, both the limited use in the Federal system and the broader use we have seen in the States, has been generally favorable, but far more study will have to be undertaken to enable us to judge its long-term effectiveness.

Corrections Personnel

QUESTION:. I see you have requested $50 million to bring on 375 full-time-equivalent staff years to staff new facilities. This works out to over $130,000 per staff year. Why is this figure so high? What is included in this figure?

ANSWER: Salaries and benefits amount to only $16,300,000 (about $43,000 per staff year) of the total requested to activate and operate the new facilities. The remaining costs include employee relocation expenses, utilities, contract services, supplies and materials and the equipment to activate the facility.

QUESTION: How does BOP plan to build up the infrastructure needed to hire and train the thousands of new employees that will be required to staff and manage the prisons?

ANSWER: BOP is currently immersed in the largest expansion plan in its history and its current staff of 17,000 is expected to more than double by 1995. Likewise training requirements are expected to double from 7,500 trainees to over 15,000 in 1995. This extraordinary growth presents unprecedented staff development challenges. In 1991 alone, BOP will fill an additional 4,798 positions of which 2,000 are specifically to address overcrowding concerns. In response to this growth, BOP has established a National Recruitment Office whose mission is specifically aimed at recruiting new employees to staff and manage our prisons.

In the area of training, we anticipate that introductory training of correctional officers can still be met at the Federal Law Enforcement Training Center in Glynco, GA. However, the existing Management and Specialty Training Centers currently located in Ft. Worth, Dallas, and Denver probably will not accommodate our training needs. In addition, the delivery of effective and efficient staff development programs at the institution level must also be enhanced to utilize state-of-the-art training techniques. BOP is currently developing a plan that will address training requirements over the next five years.

Federal Prisoner Population and Services

QUESTION: **As a result of increased drug law enforcement efforts, we have seen a tremendous increase in the Federal Prison population. In fact, the Federal Prison population has grown 127 percent since 1981 when we housed 23,783 inmates to more than 54,000 incarcerated today.**

How do the Department and the Bureau of Prisons plan to deal with the problem of an increasing Federal Prison System?

ANSWER: A top priority of the Department for dealing with increasing inmate population is to expand Federal prison capacity. Since 1981, Federal prison capacity has been increased through the addition of over 9,400 beds. More important, with funds already appropriated, the Bureau of Prisons will be able to add about 32,400 additional beds, more than doubling the capacity of the Federal Prison System during the President's first term. An important component of President Bush's violent crime initiative was the addition of $1 billion for prison construction to the approximately $400 million in funds already requested for 1990. These funds were appropriated last year and have been augmented with $377 million in excess funds transferred from the Asset Forfeiture Fund in 1988 and 1989 and an additional $109 million in 1990 expected to be transferred from the Special Forfeiture Fund administered by the Office of National Drug Control Policy.

QUESTION: **What effect have sentencing guidelines had on the facilities and services of the Federal Prison System? What effect have mandatory minimum sentences had on these facilities and services?**

ANSWER: It is difficult to separate the effect of the Sentencing Guidelines from the effect of mandatory minimum sentences. Guidelines are written to be consistent with the mandatory minimum sentences. In its 1987 report to Congress, the United States Sentencing Commission reported on its study of the impact of mandatory minimum sentences resulting from the 1986 Anti-Drug Abuse Act, the career-offender provision of the Comprehensive Crime Control Act of 1984 and the sentencing guidelines in existence at the time. The largest impact in future prison populations were due to the first two legislative changes and only marginally to the guidelines.

QUESTION: What are some of the other factors contributing to increases in the Federal Prison Population?

ANSWER: There are many factors contributing to the increase in the Federal inmate population. Among these factors are the increase in illegal drug use; the increase in convictions, especially for drug crimes; the increase in time served by drug offenders and offenders convicted of violent crimes; and the public's increased frustration with criminal behavior and its demand for appropriate punishment. This list of factors is not meant to be exhaustive.

United States Marshals Service Staffing in South Carolina

QUESTION: During the past eighteen months, South Carolina has received a new United States Attorney and a new special agent in charge of the FBI field office. Both have made drug investigations and prosecution a priority and we in South Carolina are finally witnessing aggressive Federal law enforcement in the area of drugs.

These increased efforts have resulted in a tremendous workload increase on the United States Marshals Service. For example:

-- Asset seizures have risen from $26,000 in 1988 to $8.4 million since May 1, 1989, a ten-month period. Indeed, even the Justice Department has ranked the State of South Carolina fifth in the Nation in increased asset seizure performance!

-- Real property seizures have increased from two or three for the entire four-year period from 1986 to 1989, to fifty-two since May 1, 1989.

So, as you can see, South Carolina's Asset Seizures have increased dramatically, yet the district of South Carolina still has the same number of employees in the Asset Forfeiture program within the United States Marshals Service. And, I have been told that we are now having difficulty managing the volume of seized assets with the current level of staffing.

In addition, as a result of a more aggressive FBI and United States Attorney at the helm, we are prosecuting criminals who are more dangerous than ever. This security risk translates to our judges, prosecutors, and witnesses. In fact, in March, Colombian "narco-terrorists" attempted to assault the Charleston County Jail and free a Federal prisoner convicted in a major cocaine case.

-- To shore up the critical shortage of United States Marshals Service manpower in the district of South Carolina, eight additional Deputy Marshal's and three

support positions are desperately needed. What kind of assistance can you provide South Carolina in meeting this need for additional personnel?

ANSWER: The situation in South Carolina mirrors that of all Marshals Service districts: heavy, sustained growth in every area, especially seized asset management. A major factor in this growth is the rapid expansion of the United States Attorney and Federal investigative workforce.

From 1986 to the present, the number of properties under seizure increased from 3,500 to more than 26,000. During the same period, the value of the total seized asset inventory more than tripled and now exceeds $1.2 billion.

In 1990, emergency security requirements, sequestration and other factors limited the number of new positions the Service could authorize. Nonetheless, additional staff was allocated to South Carolina to address the District's urgent requirements.

In 1989, 26 full-time positions were allocated to South Carolina. This year, another 3 positions were authorized, raising the district's total to 29. Currently, there are 30 employees on-board. South Carolina ranks among the top ten percent of districts in terms of 1990 position increases.

As aptly noted in your question, South Carolina has experienced an increase in workload which we note resulted in the 1990 staff additions. The Marshals Service 1991 budget request includes an additional 253 positions, including 134 for improved seized asset management. Once appropriated, the Service will allocate these 1991 additional resources to the areas of greatest need. You can be assured that South Carolina's needs will be addressed with the allocation of these 1991 additions to staff when they become available.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

Bureau of Prisons

QUESTION: Several years ago, the Bureau of Prisons conducted a study to determine the need, cost and feasibility of constructing a Federal prison facility to serve Hawaii and the Pacific Basin. The Federal prison study concluded that the State of Hawaii needs a Federal detention facility. I was assured by former Prisons Director, Norman Carlson, that planning for a detention facility in Hawaii would be incorporated into the Bureau's long-range facilities expansion program. The committee report accompanying the 1988 Senate Commerce, State, Justice Appropriations Bill directed the Bureau of Prisons to search for an appropriate site and submit a report to Congress by February 1, 1988. A site evaluation was never

made and Congress did not receive a report from the Bureau.

Last year, it cost the United States Marshals Service in Hawaii $1.3 million to house Federal prisoners. Since the Hawaii State prison system is overcrowded, it is difficult to house Federal prisoners in these facilities. Any Federal prisoner with a sentence of 60 days or more must be sent to mainland United States facilities. The cost of transporting such prisoners is enormous. In addition, there are no Federal prisons in the Pacific Basin to serve American Samoa, Guam and the Trust Territories. As a result, Federal prisoners in this region are often sent to Hawaii before being transported to mainland facilities, away from family and support groups that would aid in the rehabilitation process.

I am concerned that the Federal Bureau of Prisons has not seriously addressed our need for a facility. Accordingly, when can the Committee expect to receive the site evaluation and selection report that was due in February 1988?

ANSWER: As directed by the Committee, in June of 1986, the Bureau of Prisons (BOP) did complete a study on the feasibility of constructing and maintaining a Federal detention/prison facility in the State of Hawaii. At that time, BOP staff believed that a Federal facility in Hawaii could be useful and that the most practical alternative would be a "combined mission facility" to house sentenced Federal inmates, pre-trial detainees, and immigration detainees.

Although a preliminary visit was made in February of 1986 to collect data and interview officials of the United States Marshals Service, the United States District Court, the Immigration and Naturalization Service and the Navy Department of Corrections, at this time, an active site search is not underway. The reason an active search is not underway is that the pressures associated with the continuing increases in the Federal prisoner population have resulted in a shifting of priorities. Both the Marshals Service and BOP are faced with unprecedented demands on their systems in terms of availability of space and levels of overcrowding. These demands have increased even more in the past couple of years. Even though significant levels of resources have been devoted to these criminal justice activities, we regret that we have not been able to satisfy every need.

Foreign Film Crew Visa Requirements

QUESTION: Foreign film crews are required to obtain H-1 or H-2 visas in order to film in the United States. Under current procedures, it is been extremely difficult for applicants to qualify for the H-1 (distinguished merit) visa. The H-2 process is too lengthy to be workable for film crews doing commercials. As a result, Hawaii has not

had a foreign commercial filming in the State for several months. Los Angeles, on the other hand, remains extremely busy with foreign (particularly Japanese commercial production), and it appears that INS enforcement or non-enforcement of these regulations has placed some areas at an economic disadvantage. How many H-1/H-2 visas have been processed for Japanese commercial crews entering Los Angeles? What can be done to standardize the enforcement of these regulations?

ANSWER: No data are available regarding the numbers of petitions for Japanese commercial crews entering in particular geographic areas. However, given the fact that H-1 and H-2 petitions for both California and Hawaii are processed by the same officers in our Western Service Center we do not believe there is any measurable difference in enforcement of the regulations between them.

We are unable to offer any explanation why employers would be successful using the H-2 process in California and unsuccessful in Hawaii if labor market conditions are similar.

QUESTION: Given that the H-2 process appears unworkable for the needs of foreign commercial film crews (and consequently detrimental to certain local economies), would the INS consider differentiating between the production of commercials and the production of motion pictures and television programs?

ANSWER: INS believes the H-2 process is not inherently unworkable for the needs of television commercial production. Rather, the labor certification segment of the process, as it is currently regulated, makes the H-2 process extremely difficult for television commercial producers to use because of the lead time required. INS has expressed these concerns to the Department of Labor and offered to help that Department develop a workable alternative. The various unions and American film companies have participated in a number of meetings aimed at devising an effective, workable process which meets the needs of the industry as well as affording proper domestic labor market protection.

QUESTION: The need to protect jobs for American workers in motion pictures and television program production via the H-1/H-2 process is generally supported by the film industry. In addition, these types of projects have much longer preparation and planning periods. Commercial crews, on the other hand, have very short planning periods, are generally in the country for a short time (an average of 3 weeks), crew members are paid by a foreign source, and the commercial is not shown within the United States. Why is the B-1 visa not a more appropriate visa for commercial activity?

ANSWER: Most of the differences between motion picture and television production and television commercial production are irrelevant to the "H-1/H-2 or B-1" debate. Classification of a nonimmigrant is determined by the activities to be performed while in the United States, not by the amount of planning required or by the length of the trip to the United States. Furthermore, while the B-1 category requires that the alien receive no salary or other remuneration from a United States source (except travel expenses), the source of an H category alien's funds may be either domestic or foreign. At one time the Immigration and Naturalization Service considered the "exclusive foreign use of product" argument to be a strong one in favor of B-1 classification for television commercial film crews, and even published an Advance Notice of Proposed Rulemaking, on October 1, 1987, to seek the views of the public on the issue. The public response was overwhelmingly opposed to use of the B-1 classification by television commercial film crews.

Representatives of labor unions argued strongly that while a television commercial might be originally intended for use solely in a foreign country, there is nothing to prevent that film from being used as background or other material in a United States product.

Since 1987, the Immigration and Naturalization Service has met on a number of occasions with United States and foreign union and film industry representatives. These meetings have produced general agreement that the H-2 category is appropriate and that steps should be taken to facilitate the issuance of temporary labor certifications. Negotiations to establish pilot programs through the cooperation of the AFL-CIO and certain foreign film industry representatives are progressing towards resolving the problems involved in temporary labor certification issuance.

Visa Waiver Pilot Program

QUESTION: The Immigration Reform and Control Act of 1986 requires that an evaluation report on the Visa Waiver Pilot Program be submitted to Congress by this summer. Is the Service giving consideration to simplifying the visa waiver form, i.e. combining the visa waiver (791) and the Customs' declaration (I-94) forms.

ANSWER: INS intends to have a combined visa waiver/ arrival and departure record form (as originally planned) should the waiver program be extended beyond the present pilot program period.

Inspection Staff at the Honolulu International Airport

QUESTION: An increase in immigration inspection staff of 40 positions was authorized for the Honolulu International Airport. I understand the Service is having problems in staffing its booths at the Airport, which have a 20 to 25 percent vacancy rate. What is the Service doing to fill these positions?

ANSWER: Seventeen new positions were added to INS' staffing ceiling at Honolulu International Airport during 1990. INS presently is in the process of hiring ten new inspectors at Honolulu.

All immigration booths at Honolulu International Airport are filled during peak arrival periods. Off-peak staffing is based on standard inspector to passenger ratios. The hiring of ten new inspectors will provide a staffing level fully adequate to Honolulu's existing workload within the limits of the current Federal inspectional area. Delays presently being experienced are due primarily to the inadequacy of the existing facility to accommodate actual passenger volume.

QUESTION: I understand the estimated time to process inspection staff (recruiting, security check, and training), can take up to 15 months. What steps have been implemented by the Service to address the lengthy processing periods?

ANSWER: The Service, under examining authorities delegated by the Office of Personnel Management has, in fact, been able to streamline hiring of immigration inspectors in the past several years. For example, we have found that an adequate supply of well-qualified applicants is available for our positions in Honolulu and recruiting has not presented any difficulties.

The Service is bound by Department of Justice personnel security requirements and vouchering and pre-employment fingerprint checks are required prior to entry on duty. Where derogatory information surfaces during pre-employment processing, it must be resolved prior to an individual's being hired. Background investigations, which are conducted by the Office of Personnel Management, are initiated after entry on duty and in some cases take approximately eight months to complete. We have been working with that agency in the past year in order to speed up the processing of INS cases. The basic training program for immigration inspectors is 15 weeks in length. During 1990 class starts have averaged at least one per month. New trainees are nominated by their regions for participation in the training program. There should have been no delays in new employees receiving training since during 1990 several classes were not filled to capacity.

QUESTION: Has the Service been successful in recruiting locally in States where the unemployment rate is low?

ANSWER: While the Service does not keep records relating to home States, we have not had any serious difficulties in recruiting to fill positions. As of March 31, of 11,741 funded permanent positions, 11,453 were filled. The Service has been monitoring its staffing levels very carefully during the past year and hiring has been controlled. With few exceptions, we have not experienced significant problems in recruiting and filling vacancies in any particular areas.

Office of Redress Administration
Civil Liberties Act of 1988

QUESTION: I understand that the Office of Redress Administration (ORA) is committed to completing verification for 25,000 eligible persons before October 1, 1990, and will be ready to make the first year's payments at that time. Will the Office of Management and Budget (OMB) provide the full 1991 appropriations of $500 million in the first quarter so that those elderly individuals will not experience any further delays in receiving their redress payment? If not, why?

ANSWER: The Department has asked OMB to apportion all of the 1991 appropriation in the first quarter. OMB has indicated that they would approve the Department's request, taking into account an initial or final sequestration.

Please provide the Committee with a status on the verification process of eligible recipients for redress payments. Does ORA anticipate any administrative delays in issuing the first payment checks to eligible recipients?

ANSWER: As of early June 1990, ORA has mailed nearly 21,000 letters of potential eligibility. Approximately 13,000 of these letters have been returned, and the individuals have been confirmed as eligible. The remaining 8,000 letters have either not been returned or are awaiting final eligibility determinations by ORA.

ORA's ability to pay the first 25,000 eligible individuals in October depends on the availability of the full 1991 apportionment in the first quarter, and timely and accurate responses from recipients of the letter of potential eligibility.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

Juvenile Justice

QUESTION: I noted that the Department of Justice (DOJ) budget calls for a $62 million cut in funds for the Office of Juvenile Justice and Delinquency Prevention (OJJDP), down from an appropriation of $69 million last year. The budget also calls for eliminating the formula grant program to States. What is the Department's rationale for this cut?

ANSWER: The major thrust of the Juvenile Justice program has been to attain deinstitutionalization of status offenders and the separation of juvenile and adult offenders at the State and local levels. Since 1975, over $1 billion has been made available by the Federal Government and considerable progress has been made in achieving these objectives. The Administration believes that in the absence of Federal funding, States currently participating in the program will continue to commit their resources to programs that have proven successful. Accordingly, the 1991 budget request for the Office of Juvenile Justice and Delinquency Prevention includes $7.5 million to continue its High Risk Youth program, which addresses the problems with gangs and drugs and their relationship with the juvenile justice system. The program priorities focus upon preventing involvement in illegal drug use and trafficking, strengthening families, and mobilizing communities to implement comprehensive strategies for high risk youth.

QUESTION: I also read in The Washington Post (1/15/90) that DOJ was considering "contracting out" the management of OJJDP programs to private industry. Is that still on the table? If so, is this a good move?

ANSWER: Under Office of Management and Budget Circular A-76, the following steps must be completed before any such decisions can be made:

- a determination must be made as to whether the activities selected for review can be obtained from commercial sources;
- a management study must be conducted for each commercial activity to determine the most efficient and effective way to perform the activity;
- a Performance Work Statement that defines required activities must be prepared;
- a Quality Assurance Surveillance Plan that defines how the government will determine when goods and services are provided and whether they conform to a pre-established set of standards must be prepared;
- the cost to the government of accomplishing these activities with government employees must be calculated and reviewed by a person who is independent of both the studied activity and the organization conducting the review;
- a solicitation document must be prepared and issued to the public; and,
- proposals must be evaluated to determine the least expensive method of performance and a decision made, based upon costs, whether the activity should be retained in-house or contracted out.

At the present time, the Office of Justice Programs (OJP) is only now preparing to begin the management study. Therefore, a decision has not yet been made to contract-out with the private sector for the social science program specialist and analyst functions. If, however, during or after the management study it is determined that any of the positions are inherently governmental, they will be excluded from consideration.

Private sector commercial interests routinely develop, monitor, and administer activities on behalf of the Federal Government. In fact, program development, technical assistance, information dissemination, and a number of specialized project activities are currently being performed by contractors for OJJDP.

The A-76 process will allow the Agency to identify the most effective and efficient means of performing functions, set meaningful performance standards, and devise means for making sure these standards are met. It will also allow OJP to target resources for maximum benefit, provide high quality services, and ensure that we are working in the most effective manner possible toward achievement of program goals.

Bureau of Prisons - Prison Construction

QUESTION: I am concerned about DOJ's large cut in prison construction. Last year $1.4 billion was provided for the "Building and Facilities" account. For 1991 DOJ is calling for $374 million for this same account, a decrease of more than $1 billion. Is this wise in light of the fact that the Federal Prison System is now operating at an overcapacity rate of 69 percent according to a December 1989 GAO report?

ANSWER: It is misleading to suggest that the Department has cut its request for prison construction funds by $1 billion. Our original 1990 request was $401 million, but in May 1989, President Bush announced as part of his violent crime initiative a request for an additional, one-time appropriation of $1 billion for prison construction. This extra amount was enacted into law in the Department of Transportation Appropriations Act.

These funds, coupled with additional funding from asset forfeitures, are expected to support the expansion of Federal prison capacity by about 24,500 beds, which will come on line between 1991 and 1995. The total increase in beds expected from already appropriated funds is about 32,400. Our 1991 request of over $374 million includes funding for construction of 6,175 additional prison beds and activation of another 3,315 beds and is, therefore, in line with our projected needs for the next five years.

Regional Drug Treatment Prison

QUESTION: Senator Biden, Chairman of the Senate Judiciary Committee, has a proposal to build ten "Regional Drug-Treatment Prisons" at a cost of $700 million in construction and first-year operations. The facilities would be specifically designed for Federal prisoners with drug-abuse problems. According to the Washington Post

(12/4/89), about 40 percent of Federal inmates have a moderate or serious substance-abuse problem. Do you think this proposal has any merit?

ANSWER: Senator Biden's proposal on alternative drug strategy relating to regional prisons would allocate $700 million for the construction and first year operation of ten regional prisons. The prisons would be occupied by 6,400 State and 1,600 Federal prisoners who have drug abuse problems.

While not directly stated, Senator Biden's proposal implies that the Federal Bureau of Prisons would run these facilities. It is clear, of course, that the majority of prisoners (80 percent) would be State offenders.

Although some State prisoners are housed in Bureau of Prisons institutions, this has been accomplished through cooperative arrangements over the years and primarily involves inmates with special correctional management needs. And, in turn, there are instances where Federal inmates are placed in State correctional systems; however, this also occurs as a result of a unique set of circumstances.

From our perspective, Senator Biden's proposal would be the prelude to placing ultimate responsibility for the care of all prisoners on the Federal Government.

Beyond the fact that such an action would be philosophically inappropriate is the very real concern that the proposal is unworkable from a pragmatic perspective.

Today, Bureau of Prisons institutions are overcrowded by a system-wide average of 68 percent, with several individual institutions overcrowded by more than 100 percent. The current population of over 56,000 inmates is housed in prison facilities that have a rated capacity of about 32,500.

As a result, the Bureau of Prisons is involved in the largest capacity expansion program in its history. Capacity expansion funded and planned for the next five years will cost approximately $2.7 billion and will add about 42,600 beds to keep pace with projected increases in the Federal inmate population and to simultaneously reduce prison overcrowding to 30 percent. The effort required to locate sites, design and construct facilities and to hire and train the number of staff required to operate the facilities already planned is an undertaking of considerable magnitude.

In view of the human effort involved and the amount of resources required to carry-out the facilities expansion program for the Federal Bureau of Prisons alone, it would be unrealistic to think that it would be possible for the Federal Government to build and operate another ten regional prisons to accommodate the State and local prisoners identified in Senator Biden's proposal.

Military Conversions

QUESTION: Senator Reid also has introduced legislation to give the Bureau of Prisons first crack at converting military bases slated for closure into drug-detention facilities. What are your thoughts on this?

ANSWER: While I appreciate Senator Reid's support and interest in this area, I do not believe the legislation is necessary in view of the programs already in place and initiatives underway. The Bureau of Prisons has been working closely with the Department of Defense and has expressed interest in a number of facilities identified through the Base Closure and Realignment Act. In addition, I believe BOP's active participation as a member of the Commission on Alternative Utilization of Military Facilities may lead to further opportunities to make use of military facilities.

Vaccine Injury Compensation Trust Fund

QUESTION: The most recent Budget Reconciliation Act authorized the Department of Justice to be reimbursed up to $1.5 million in 1990 and 1991 from the Vaccine Injury Compensation Trust Fund for its work on vaccine injury cases. Congress provided an appropriation limitation of $1 million for 1990. The Department is seeking the full $1.5 million in 1991. What is Justice doing with the $1 million in 1990?

ANSWER: With the 1990 funds, the Civil Division is hiring nine trial attorneys and appropriate support staff to handle vaccine petitions. The recruitment process is nearly complete; seven new attorneys and four support staff have been hired, and offers of employment have been accepted by two additional attorneys. Automated litigation support has also been funded in order to properly organize and maintain the cases, each of which involves several hundred pages or more of medical documents. This support will also track necessary data concerning the litigation program and provide for the recording and recall of the decisions of the special masters and the court for reference purposes. Finally, funds have been and will be used for routine case-related expenses such as transcripts, expert witnesses (typically to assist the court in determining the proper amount of compensation in a given case or, in some cases, to allow for independent medical testing), equipment, communications, mail and travel-related expenses.

QUESTION: Are claims being processed promptly?

ANSWER: The Department is committed to the prompt processing of cases now that attorney staff and funding are available to properly implement the statute. In addition, the court has simplified the procedures for the adjudication of vaccine claims. As the process of resolving petitions for compensation is further refined, we are fully confident that petitions will be handled well within the time limits imposed by Congress and the court.

QUESTION: Are there backlogs of cases within the Department?

ANSWER: When the 1989 amendments were enacted and the program was suspended for 30 days, there was in excess of 100 cases pending resolution. That backlog has since been reduced to the point where we estimate that approximately 60 pre-amendment cases remain unresolved. In addition, the Department is involved in 82 new cases which have been filed since the suspension was ordered. These post-amendment cases have recently been filed at the rate of between six and eight a week. We are currently examining the remaining "backlog" cases to determine what further action is appropriate.

QUESTION: Why does the Department require 50 percent more money in 1991?

ANSWER: Given the lateness of the enactment of the 1990 appropriation, there was a substantial lapse in time before the Division could begin to hire new staff and provide support services to the vaccine litigation. The 50-percent increase in 1991 is to cover the annualized costs of the 1990 resources. A lesser funding level would entail a diminution in the level of effort that I believe to be dangerous. The importance of adequate funding to permit Department participation is exemplified by two recent special master decisions rendered without the benefit of our involvement. In each case the petitioner was awarded approximately $4.5 million in compensation. I consider these awards to be excessive and contrary to the intent of Congress that reasonable compensation be provided to persons who have suffered vaccine-related injuries. Awards of this nature jeopardize the availability of any compensation for injured children who file their petitions later in time.

QUESTION: Does the Department anticipate significant increases in the number of cases filed?

ANSWER: It is reasonably anticipated that up to 500 cases will be brought by the close of 1990. These cases consist of (1) "old" cases which will be filed before the statute of limitations expires for pre-effective date vaccination cases this fall and are likely to appear as a "bubble" at the end of the fiscal year, and (2) new cases that will be generated by the Department of Health and Human Services' upcoming campaign to publicize the availability of the National Vaccine Injury Compensation program. An additional 200 cases are expected to be filed in 1991.

Immigration and Naturalization Service Funding Level

QUESTION: I noted that the Department has requested a 5-percent increase for the Immigration and Naturalization

Service (INS) -- from $842 million in 1990 to $884 million in 1991. In light of our Immigration problems and the many responsibilities of the INS, will this request allow the agency to properly take care of all its business?

ANSWER: The INS 1991 budget request for Congress was developed in cooperation with the Department of Justice and the Office of Management and Budget. The request is for 12,522 positions, 12,260 workyears and $884,349,000. This represents an increase of 134 positions and $42,052,000 over the 1990 appropriation level. Additionally, when funds from the non-appropriated fee accounts are taken into consideration, total resources available to INS in 1991 will be over $1.1 billion. This figure represents an increase in total resources of more than $100 million over the combined 1990 level.

Even though the budget for the Service was developed in the current climate of fiscal constraints and budgetary concerns, it nonetheless provides the resources necessary for INS, through improved management techniques and increased efficiency in its operations, to successfully fulfill its statutory mission and deal with the many critical and sensitive issues arising from the administration of the Immigration and Nationality Act.

Defense Procurement Fraud -- Qui Tam Actions

QUESTION: One provision of the False Claims Act passed by Congress in 1986 authorizes *qui tam* actions by private plaintiffs to prosecute waste and fraud in Federal programs. The law provides that once a complaint is filed, DOJ has 60 days to enter the case. Does this 60-day period give DOJ enough time to review these cases, especially if it involves complex fraud? Does the 60-day period force DOJ to "prioritize litigation", i.e., make attorneys drop what they are doing to meet the deadline?

ANSWER: The 60-day deadline is inadequate to allow the Government to investigate even the most straightforward allegations of fraud, let alone the more common complex fraud charges. Allegations of fraud in Government programs or involving Government contracts can only be corroborated, and a case developed, by reviewing numerous documents and interviewing Government and company or third-party witnesses. Often a detailed audit of costs and documents is required to calculate the loss. While some *qui tam* cases are accompanied by detailed statements of material evidence, most are not. Typically, the plaintiff provides the basic allegation along with limited documentation and evidence; usually there is no accompanying damages computation. Thus, Government attorneys find themselves with a 60-day deadline in which to gather documents -- often requiring the issuance and enforcement of an administrative subpoena -- to obtain witness statements and to have an audit conducted.

The time necessary to complete the basic investigation for virtually all cases requires the Government to request an extension. While the courts have generally been receptive to such motions, we have encountered resistance from both relators and the courts when seeking more lengthy extensions -- despite the fact that it has been obstacles beyond the Government's control, like a company's unwillingness to produce documents or make witnesses available for interviews, that have necessitated such requests. In addition to insufficient time for conducting preliminary investigations, the Civil Division is often faced with the pendency of a concurrent criminal investigation taking priority and consuming the investigative resources which could be available for the qui tam investigation.

Finally, the limited investigative period demands that qui tam cases take priority over other pressing matters, including fraud referrals involving greater losses and significant legal issues and cases in which statutes of limitations may soon run. Our attorneys have little flexibility with the growing qui tam caseload, requiring great expenditures of time in order to complete investigations within the current statutory deadlines.

QUESTION: According to a recent ABA Journal article, Civil Division attorneys are spending about 50 percent of their time on qui tam cases. Is that accurate? Are these cases taking attorneys away from looking into other brands of Government fraud?

ANSWER: Recent trends indicate that Civil Division fraud attorneys will soon be spending close to 50 percent of their time on qui tam cases. Since the 1986 amendments to the False Claims Act, the number of filings has grown steadily and the associated attorney time has risen substantially. In the first six months following the October 1986 passage of the amendments, the amount of attorney time dedicated to qui tam cases constituted about 7 percent of time spent on all fraud matters; it increased to approximately 15 percent by the first six months of 1988, and to 37 percent by the first six months of 1989. During the first few months of 1990, it increased to 43 percent. Based on this trend, we predict the percentage of attorney time spent on qui tam matters to continue to rise through the end of the year. As described above, the demands of these cases necessarily involves our putting other matters "on the back burner".

Even where the Civil Division declines to intervene in a case, we monitor the case to ensure that there are no legal or other issues which require our involvement. When issues under the False Claims Act arise in the cases we choose not to litigate -- as they often do -- a substantial amount of time is required to monitor and sometimes appear as amicus. Additionally, the Government may face requests from either the relator or defendant for material from its investigation and become involved in legal proceedings with respect to these requests. It should be remembered that these are cases we have decided not to use our resources to litigate and, for the most part, would not have chosen to pursue as non-qui tam matters.

QUESTION: Under the law, a plaintiff is guaranteed a minimum of 15 percent of the recovery if DOJ joins the case. If DOJ doesn't join the case, the recovery is between 25 percent and 30 percent. Does the fact that the plaintiff has a strong financial stake in the outcome undermine the credibility of the evidence presented? How does that play out in court? How many of these cases would you deem are "frivolous"?

ANSWER: Since 1986, the Civil Division has elected to intervene in only 25 percent of the cases in which an election has been made, with many matters still under investigation. In general, the declined cases are those in which our investigation has not corroborated the allegations; some involve cases where other reasons-- like the size of the claim -- did not warrant our participation. In short, the majority of cases are without merit. Of these, some are frivolous on their face. In these instances, we exercise our discretion and give them a limited examination before declination. For the larger group of cases in which some broad-based charge is levied against a contractor, only after more thorough investigation are we able to decide that they are not meritorious. These cases consume substantial resources within the Department of Justice, as well as within the investigative organizations of its client agencies.

The very nature of the qui tam reward creates a powerful basis to attack the credibility of witnesses, not only in civil cases, but also in any related criminal prosecutions. Thus far, the credibility of relators has been challenged in many cases; some have been labeled as self-interested "bounty hunters" and others as disgruntled terminated employees. In anticipation of encountering such problems, we have looked to other sources of evidence to prove our cases and have avoided placing exclusive reliance on the relator's testimony.

Drug War Funding

QUESTION: The President's $10.6 billion drug control strategy recommends a 1991 budget that divides our resources on a ratio of 71 percent for law enforcement and 29 percent for treatment and education (A.K.A. "Demand Reduction"). It seems to me that we have some very serious drug addiction problems in this country; drug abusers who seek out help have to wait long periods of time to get into treatment programs, etc. In light of the 1988 Anti-Drug Bill which provides for a 50/50 split in resources, doesn't it seem a better allocation to go for a more equitable division -- e.g., 60/40 55/45?

ANSWER: I have said many times, if we want to lose the war on drugs, we should just leave it to law enforcement. By this, I mean we must pay equal attention to the demand side by reducing the consumption of drugs through programs of prevention, education, rehabilitation, and treatment, and holding the user accountable for a share of the economic and social costs of drug dependency. However, a sustained commitment to both the demand and supply strategies is essential if we are to be successful.

It is my belief that law enforcement groups should continue to use their position of knowledge, respect and authority to educate our citizens to the dangers associated with the use of illegal drugs and steer them away from substance abuse to a drug-free life.

In addition, we should not forget that every drug-related investigation and the increased emphasis on user prosecution have a demand reduction aspect as well. Encouraging street level enforcement contributes greatly to the overall demand reduction strategies, serving as a deterrent to drug trafficking and abuse by raising the costs of drug use and trafficking. While significant and permanent demand reduction is the long-term answer, that will only be successful in an environment of strong law enforcement pressure as a deterrent to both the drug smuggler and the drug user until prevention and education programs take effect.

While demand reduction is not the primary responsibility of the Department of Justice, and the Department's activities are not identified formally under demand reduction in the budget, there are several direct demand reduction programs within the Department that I support and plan to continue. These include the efforts of the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) Demand Reduction Coordinators who have joined forces with the National Youth Sports Coaches and the Boy Scouts to develop and implement drug abuse prevention programs. Likewise, the INS Border Patrol conducts its own drug awareness programs in public schools. The United States Attorneys (USA) were given responsibility for demand reduction activities in their districts in the spring of 1986. Generally, that responsibility has been delegated to the Law Enforcement Coordinating Committee (LECC) and many successful programs are underway. For example, the United States Attorney in Maine works closely with the Governor's Office in a community-based program, which has led to a second Statewide conference on drug abuse. The Federal and State multi-disciplinary strategy also included development of a televised "town meeting" on alcohol and drug abuse with follow-up workshops throughout the State. Using a task force approach that included representatives of all backgrounds, the United States Attorney's Office in the Middle District of Louisiana focused on drugs in the workplace and produced a 48-page booklet, "Drugs in the Workplace -- in the Middle District of Louisiana." In several States, United States Attorneys support Statewide demand-reduction efforts. In the Western District of Texas, both the United States Attorney and the LECC

Coordinator are actively involved with the Texans War on Drugs and Just Say No Programs in the schools. The United States Attorney's Office in the Western District of Tennessee runs an informal law enforcement speakers bureau for Memphis and Shelby Counties, training speakers and coordinating efforts with all of the local departments. The Bureau of Justice Assistance works closely with and supports the National Crime Prevention Campaign, featuring "McGruff the Crime Dog." The "Just Say No" campaign, which educates school children about the dangers of drugs, includes a 23-minute McGruff video available at no cost to all law enforcement and educational institutions.

Drugs in Rural Areas

QUESTION: What is the Department doing to combat drug trafficking in rural areas?

ANSWER: The Department recognizes the importance of combatting drug trafficking in rural areas. We believe that the best way to launch a successful attack on drug trafficking organizations, is through a combined effort in major metropolitan areas and rural areas. The Department's law enforcement resources are largely focused on major metropolitan areas due to resource limitations. However, rural areas also benefit indirectly from this focus because the supply of drugs to rural communities generally originates from these major metropolitan areas. For the most part, trafficking organizations are centered in major cities. Stopping the supply at this point, closer to the transshipment source, will assist the enforcement efforts of Federal, State and local officers in rural areas.

The Department's law enforcement agencies are often forced to rely on State and local law enforcement authorities to target areas that cannot be reached. Each agency maintains an active presence in rural areas but also depends on active participation of State and local law enforcement agencies through State and local task forces. For example, DEA's State and local task force program provides training, equipment and coordination of drug enforcement activities with State and local law enforcement agencies. There are 11 DEA State and local task forces that are located in rural areas. DEA also provides grants to the States for domestic cannabis eradication which is largely in rural areas. The DEA 1991 request includes a $10 million increase for this program. In addition, the Organized Crime Drug Enforcement Task Force investigations often involve coordinated and cooperative efforts with State and local law enforcement authorities.

The FBI also maintains a presence in approximately 450 field offices and resident agencies (which are considered rural areas) across the United States. Furthermore, the INS border enforcement efforts between the ports of entry and land border inspection ports are largely focused in rural areas.

Federal resource assistance is provided to State and local agencies primarily through OJP’s grant programs. The States may elect to target a portion of these resources to rural areas. The grant program allows for the necessary resource assistance, whether enforcement or education-related, and provides for a comprehensive effort to all localities. In addition, State and local law enforcement agencies receive resources from assets forfeited as a result of their participation in an investigation. Last year, equitable sharing payments to State and local law enforcement agencies was approximately $157.3 million, and $16.4 million in forfeited property was also transferred to these agencies.

Savings and Loan (S&L) Fraud

QUESTION: I noted the Department’s increased request for prosecuting S&L fraud cases. How many cases does DOJ estimate it could bring if the Department had unlimited resources?

ANSWER: At the time the Department’s 1991 plans were formulated, there were 357 insolvent financial institutions under criminal investigation and 3,340 pending FBI investigations. Thus, the number of potential fraud cases is in the thousands. Information growing out of these investigations will, eventually, enable a more specific determination of the number of viable fraud suits which the Department could bring -- with unlimited resources. There would undoubtedly be a significant increase in prosecutions initiated by United States Attorneys Offices and the Criminal, Tax and Civil Divisions. However, it is premature to venture a guess at this time as to the number of fraud suits that can be brought ultimately.

In 1990, the Department made available approximately 1,660 positions and $111 million to combat financial institution fraud. Of this amount, 760 positions and $49.2 million were provided in the financial institution fraud initiative. The President’s 1991 budget includes program increases of 128 positions and almost $5.5 million for the FBI and Tax and Civil Divisions. For the FBI, the Administration has requested 68 positions and $1,798,000 to investigate bank fraud and embezzlement. The Tax Division request includes $279,000 primarily for automated litigation support related to financial institution fraud cases. Sixty additional positions and 3,419,000 have been requested for the Civil Division. This amount is requested primarily to handle the rise in civil litigation triggered by the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (FIRREA) which contains a new civil penalty provision intended to parallel criminal remedies and enhance substantially the Government’s enforcement efforts. These increases, together with base resources available from enactment of the Department’s 1990 Appropriations Act, will present the Department with a formidable prosecution effort for the coming years.

QUESTION: In light of the estimated $300 to $500 billion it will cost to bail out the industry, what is the dollar estimate on the total amount of fraud -- especially as a percentage of the total loss?

ANSWER: The Department does not have a reliable estimate of the total amount of loss due to S&L fraud. The Barnard Report estimated losses in excess of $3 billion in connection with some 3,340 pending FBI investigations.

Inspectors General

QUESTION: For over ten years following enactment of the Inspector General Act, the Justice Department prosecuted thousands of cases based on Inspector General (IG) investigations which the Office of Legal Counsel decided in 1989 are now beyond their authority. This makes no sense. What is the explanation for this change in policy? What public-interest goal is being served by this new position? Does it not send a signal to defense lawyers that there is now a new way to hold up or stop an IG's investigation?

ANSWER: The position of the Department of Justice on the authority of the Inspectors General has not changed. Before the request that led to the Office of Legal Counsel's (OLC) Opinion of March 9, 1989, the Department of Justice had never been asked to give an opinion about whether the Inspector General Act of 1978 confers authority for an IG to conduct regulatory investigations that are an integral part of an agency's programs.

We are also unaware of a basis for the assertion that "[f]or over ten years following enactment of the Inspector General Act, the Justice Department prosecuted thousands of cases based on Inspector General (IG) investigations which the Office of Legal Counsel decided in 1989 are now beyond their authority." The OLC Opinion and the subsequent advice of that office have recognized that IGs have broad and suitable investigative powers. Given the breadth of the IGs' powers, we cannot see any reason to believe that the OLC Opinion would rule out thousands of investigations that IGs have previously undertaken. IGs can investigate allegations of misconduct on the part of agency employees or private parties acting in collusion with agency employees. They can investigate contractors and grantees who receive Federal funds. They can conduct oversight investigations, in the course of which they can perform "spot checks" of particular instances where regulated persons have not complied with regulatory requirements. And, in many cases, they have additional authority under the grandfather provisions of the Inspector General Act. Opinion at 4 n.6, 17.

Indeed, Stuart M. Gerson, the Assistant Attorney General for the Civil Division, presented statistics in his recent testimony before the Senate Governmental Affairs Committee indicating that relatively few prosecutions have involved investigations that the OLC Opinion would rule out. After the OLC Opinion, the Secretary of Health and Human Services (HHS) withdrew a delegation of authority under which the HHS-IG could conduct regulatory investigations in Food and Drug Administration cases.

You ask what "public-interest goal" is being served by our position. This question appears to be based on a faulty premise because the Department of Justice's 1989 opinion was not a policy statement but a legal opinion whose result was dictated by our construction of a statute that Congress wrote. As we explained at greater length in our testimony before the Senate Committee on Governmental Affairs, we believe Congress made a wise policy decision in imposing jurisdictional limitations on IGs. First, by precluding IGs from undertaking the day-to-day operations of agencies whose conduct they must review, the Act preserves the necessary independence of IGs. Second, these jurisdictional limitations also preserve the necessary authority of the head of the agency or the official designated by statute to set a department's regulatory policy. Third, by precluding IG resources from being indiscriminately used for regulatory investigations in a Department, the Act reserves to Congress its right and obligation to make resource allocation decisions among the Department's regulatory programs.

Finally, the Opinion did not "send a signal to defense lawyers that there is now a new way to hold up or stop an IG's investigation." As long as IGs stay within the boundaries of their jurisdiction as set by statute, the subjects of IG investigations will have no grounds for impeding those investigations. We have offered to assist in answering any questions that IGs may have about the scope of their authority, but few IGs have felt the need to seek guidance. To be sure, the possibility that a defendant or potential defendant might raise the issue of IG authority and thus impose additional burdens in the investigation or prosecution of a case has been of concern to us, and we have tried to take the steps necessary to remove the basis for any such argument. In any event, as discussed more fully below, only three prosecutions or convictions have, to our knowledge, been challenged on the basis of a claim that an IG acted outside his authority as identified in the OLC Opinion, and not one of these challenges succeeded. Defense lawyers thus can hardly have received any "signal" that the OLC Opinion offers "a new way to hold up or stop an IG's investigation."

QUESTION: Will DOJ reverse this ruling? What actions will DOJ take to return our IGs to a position where they can fight fraud diligently and instinctively?

ANSWER: The Department will not reverse the ruling because we believe that it is correct. Furthermore, we believe that the IGs already have the necessary legal tools to carry out their responsibilities. Problems of resource allocation raise different issues, which were not addressed by the OLC Opinion. As Mr. Gerson testified, there are resource allocation problems within almost every agency. If a particular agency with responsibility over an investigation needs assistance from its IG, and the IG's authority would not encompass the assistance needed, a detail of the necessary IG investigators to the appropriate agency in most cases would be permitted by statute. The relevant agency or Executive branch department's statutes, including its appropriations, would need to be examined before a specific answer could be given. As explained in Mr. Gerson's testimony to the Senate Government Affairs Committee, the advantage of a detail is that it is consistent with the concept of having a separate IG office of watchdogs. Once detailed to the regulatory agency, the IG personnel become supervised by that agency, not the IG's office, and they become part of the overall regulatory mission. For purposes of that specific investigation, they are as much part of the regulatory agency as any other employee, and also as subject to the IG office's traditional oversight for misconduct, fraud, waste, and abuse.

QUESTION: The Justice Department testified yesterday before the Senate Governmental Affairs Committee that there have been at least three challenges to convictions or prosecutions based on the new ruling already. What are the details of these cases? Why shouldn't we expect more challenges like this from the Defense Bar? Will the United States Attorneys be instructed not to prosecute these cases in the future?

ANSWER: In his testimony before this Committee, the IG for HHS identified three instances when the OLC opinion was relied upon to challenge the authority of an IG investigation. Our testimony relied upon those examples, as we were not aware of any others. In no instance was there an adverse impact on the government's ability to proceed.

In one of the examples cited, two Inspector General subpoenas were served on the Travelers Insurance Companies, as part of an IG investigation into whether Medicare was being wrongfully charged as the primary payor for "working aged" individuals, when it should have been liable only as a secondary payor, with a private insurer as the primary payor. In a letter to the Office of Inspector General (OIG), Travelers questioned the IG's authority to conduct the audit for which the subpoenaed information was sought. Upon inquiry from the IG, OLC quickly confirmed that the OIG investigation was proper. In the subsequent successful enforcement proceedings, Travelers did not pursue this issue but, rather, concentrated on seeking a confidentiality order.

In the second instance, an anesthesiology group practice, under investigation for submitting false claims to Medicare, challenged the OIG's authority to investigate and seek civil monetary penalties and assessments under Section 1128A of the Social Security Act. According to the IG, the Administrative Law Judge upheld sanctions against the anesthesiology group without directly discussing the OLC issue. We understand that the matter is currently on appeal to the Appeals Board of HHS.

Finally, the IG points to an investigation related to the submission of false statements in connection with a Medicare investigation. The defendant initially argued that the OIG was precluded from conducting the investigation by the OLC opinion because the case involved neither Federal money nor employees. The Department of Justice did not agree that the IG lacked authority. The defendant has been indicted and the case is awaiting trial.

Given the failure of all three challenges, the defense bar may well conclude that it is futile to raise such arguments about IG authority. In any event, the United States Attorneys will not be instructed that they should forgo the prosecution of cases in which issues of IG authority might be raised.

QUESTION SUBMITTED BY SENATOR ROBERT C. BYRD

Law-Related Education Program in West Virginia

QUESTION: Last year, the Committee supported an increase in the funding for the coordinated Law-Related Education (LRE) program, which was intended to expand the program into three new States, including West Virginia, and for expansion of LRE training into non-school sites and the implementation of a new and comprehensive anti-drug, anti-violence curriculum.

The LRE is funded by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention. Forty-three States are currently participating in the program and receive funds in a subgrant awarded by the Constitutional Rights Foundation. The LRE program is a cooperative venture of dissemination, training, and technical assistance.

I am advised that the grantee chosen to administer the West Virginia program will be the American Bar Association and that the initial grant is to be made in September, 1990. Please provide for the record the three-year plan for the program in West Virginia, including significant milestone events leading to the full implementation of the program. What more can be done to accelerate and expand this program in West Virginia?

ANSWER: The grantee chosen to assist West Virginia in becoming a participant State in the National Law-Related Education (LRE) Training and Dissemination Program of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is the Special Committee on Youth Education for Citizenship of the American Bar Association (ABA). ABA staff have met and discussed the OJJDP program on several occasions with the Executive Director of the West Virginia

State Bar, Mr. Thomas Tinder. Mr. Tinder was advised that ABA would be available to provide technical assistance to the State should it decide to become a participant in the LRE program.

In May 1990, the State of West Virginia made a commitment to participate in the LRE program. Mr. Tinder has been advised that $5,000 of Federal funds would be available to the State to develop an infrastructure for LRE. These funds could be used, for example, for an awareness conference within the State or for intra-State travel expenses for LRE. These funds will be available after August 1, 1990.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

General Budget

QUESTION: How do you think you fared in the overall 1991 budget process within the Administration?

ANSWER: In 1991, the President requested $8,950,594,000 in Federal funds. In addition, with $20,000,000 in anticipated receipts from premerger filing fees linked to the Hart-Scott-Rodino Antitrust Improvement Act, the resources requested totalled $8,970,594,000. In terms of budget authority requirements requiring action by the Committees on Appropriations, the 1991 request is $7,810,632,000. The Department believes that this request reflects the President's strong commitment to law enforcement.

The Department's request to the Office of Management and Budget (OMB) for 1991 was $9,022,168,000, an increase over 1990 availability of 4.8 percent. The request to Congress includes 99.4 percent of the Department's request to OMB of $8,970,594,000.

QUESTION: Please discuss your highest priorities, not only for this 1991 budget, but for the next few years.

ANSWER: The war on drugs continues to be the Department's, as well as the Administration's, major priority. But a crackdown on white-collar crime, including savings and loan fraud, housing program fraud cases, public integrity, defense contractor fraud, and securities and commodities cases, is also of the utmost priority. Furthermore, organized crime remains a major concern. We are increasing our fight against Asian organized crime and continuing to investigate and prosecute more traditional elements of organized crime. We are also devoting additional resources to environmental law enforcement, protection of civil rights and antitrust enforcement.

In terms of funding needs, the Department has no choice but to expand prison and detention capacity in order to assure the American people that those individuals who are convicted of crimes are appropriately detained and punished. We do have a five-year plan to bring down prison overcrowding to under 30 percent by 1995, and we will be requesting additional construction and activation resources to meet that plan. Furthermore, we are reviewing our detention needs with the goal of coming up with a coordinated plan this year to address the dire situation we face regarding the housing of Federal detainees.

QUESTION: Are you satisfied with the drug resources requested for the Department of Justice in this budget?

ANSWER: Yes, I am particularly pleased with the Department's drug resources in this budget. Our 1991 request reflects the Administration's continued commitment to end the scourge of drugs. The request represents a balanced approach to addressing the war on drugs, with continued emphasis on investigations, prosecution and incarceration.

This budget fully supports the National Drug Strategy (II), includes resources directed at High Intensity Drug Trafficking areas, and targets both the supply and demand aspects of the drug problem by enhancing efforts to deter drug use, disrupt drug trafficking, and arrest, prosecute, and punish drug criminals. The Department's 1991 request to Congress reflects a net increase over 1990 of $35.8 million for the Department's drug programs. This net increase is composed of an increase of $493.8 million for the Department's drug programs and a decrease of $458.0 million in non-recurring resources for prison construction. The increases to the Department's drug programs are as follows:

For the **Organized Crime Drug Enforcement Task Forces** (OCDETF) program, the 1991 request includes an increase of $115.1 million to provide for more investigators for undercover operations; more agents to track aliens involved in drug trafficking; additional personnel to work on the money laundering and financial crimes that are attributable to drug activities; more officers to capture narcotic fugitives; more intelligence analysts; and more attorneys to prosecute those caught in these illegal activities.

For the **Drug Enforcement Administration** (DEA), additional resources of $151 million are requested to expand operations in 15 major domestic source cities and 13 overseas offices, and to open one new overseas office and to support DEA's Special Enforcement Operations/Programs that target and immobilize major trafficking organizations. An additional 501 agents (of which 93 will be funded by OCDETF) will be provided to support drug enforcement efforts. This increase in agents will be complemented by adequate support positions in the areas of automated data processing, intelligence, laboratory services and training, and DEA's air support program will be expanded. An increase of $19 million is also included to support State and local governments for domestic cannabis eradication and to establish nine new State and local task forces.

For the **Federal Bureau of Investigation** (FBI), additional drug resources of $31.5 million are included in its 1991 request. These resources will support a net increase of 226 agents (of which 154 will be funded by OCDETF) for field drug investigations and special support personnel such as electronic surveillance monitors, forfeiture analysts, language specialists and drug intelligence analysts. In addition, funding is included to support the FBI's undercover operations and informant payments programs.

For the **Immigration and Naturalization Service** (INS), additional drug-related resources of $13.0 million will help the Border Patrol to secure our borders from the influx of illegal drugs and attributable violence. Furthermore, INS's participation in the OCDETF program will provide an additional 24 special agents for these task forces. In addition, INS will increase its bed space by 300 beds for the detention of criminal aliens.

For the **Office of Justice Programs**, additional funding of $44.6 million is requested for the Drug Control and System Improvement Grant Program to enhance State and local efforts against drug-related crimes. These grants will aid in the development of programs to assist multi-jurisdictional task force efforts, career criminal prosecutions, demand reduction education, the identification, assessment and referral for treatment programs, and community and neighborhood programs to assist citizens in regaining control of their streets.

For the **Federal Prison System**, the increases provided in 1990 will add 6,175 more beds in 1991 to the 24,500-bed increase realized in 1990. In addition, these resources will support an additional 845 workyears to staff 14 renovated and new facilities projected for activation in 1991. Furthermore, additional resources for the Cooperative Agreement Program will secure 375 beds for pre-sentenced Federal prisoners in State and local detention facilities.

For the **United States Attorneys** (USA), additional resources of $47.6 million in 1991 will annualize 687 prosecutorial and support positions provided in 1990. Furthermore, an additional 151 attorneys will be funded by the OCDETF. The Organized Crime Strike Forces of the Criminal Division will be merged into the USA offices to provide further coordination and support for complex organized crime cases.

For the **United States Marshals Service**, additional resources of $46.8 million will support the protection of the judicial process and enhance the Prisoner Transportation and Detention program.

Finally, the seizing of assets of drug criminals helps to dismantle the larger criminal organizations that depend on revenue generated by their drug activity. In 1991, the increase in agents and asset removal teams will increase the number of drug-related property seizures. Income from forfeitures for the **Assets Forfeiture Fund** is expected to be $500 million in 1991. This income represents a deprivation of assets of drug criminals, and will also be used to further investigations and prosecutions of other drug offenders.

FBI - DEA Cooperation

QUESTION: There have been persistent complaints about the lack of DEA and FBI cooperation in drug law enforcement. It is alleged that DEA and FBI independently develop investigative strategies and priorities, operate separate intelligence systems, and use different systems for reporting and measuring performance. Could you please discuss this?

ANSWER: The DEA and the FBI are the only two agencies of the Department with drug intelligence-gathering responsibilities. In the area of drug investigations, the two agencies work together through formal task forces such as the Organized Crime Drug Enforcement Task Forces and through informal task forces to target and immobilize major drug trafficking organizations. Intelligence sharing is critical in dismantling these organizations.

Due to the nature of the investigative agencies, both the DEA and FBI have maintained separate intelligence bases. The FBI's intelligence base is oriented toward fully identifying the infrastructure and leadership structure of major drug trafficking organizations. DEA's Narcotics and Dangerous Drug Information System (NADDIS), to which the FBI contributes information, concentrates on developing information on individual traffickers rather than organizations. Furthermore, the FBI has developed an automated Drug Intelligence System (DIS), in part, to track information on drug traffickers. DIS is an automated database that would provide for a gateway to several different FBI systems linking information from several sources onto one computer system. DEA provided information from its NADDIS to augment this data base.

Intelligence information is routinely shared between the agencies in efforts to assist each other's ongoing investigative efforts. For example, information concerning the identity of persons under investigation is exchanged at the initiation of each drug case and later when additional subjects are identified. Both agencies have identical policy which mandates this information exchange.

In addition, Joint Drug Intelligence Groups have been formed by personnel from DEA and the FBI in Miami, New York and Los Angeles and are solid examples of cooperation between the two agencies. These Groups are designed to provide a standardized field-wide approach to drug intelligence investigations for DEA and the FBI utilizing the Racketeering Enterprise Investigation format and the state-of-the-art Drug Information System. The goal of these groups is to document and profile major trafficking organizations for eventual selection as a joint or parallel investigation by DEA and the FBI on a Federal, State or local level. Groups are also planned for Chicago and Houston.

Also , the Department is moving forward with plans to establish a National Drug Intelligence Center to improve coordination of drug intelligence.

QUESTION: How is the coordination of the drug war proceeding?

ANSWER: Coordination among all Federal, State and local agencies is proceeding and is absolutely essential due to the multitude of agencies involved in drug law enforcement. DEA's State and local task force program is a dynamic initiative that steadily increases the role and expertise of State and local officers in the war on drugs. It provides increased cooperation between Federal, State and local law enforcement organizations, increased intelligence generated at the State and local levels, and increased return on investment in terms of asset seizures. By policy, both DEA and FBI field offices exchange information at the initiation of all new drug cases. In addition, when new subjects are identified, this information is also exchanged. Routine coordination is also maintained at the Headquarters level to facilitate investigative scenarios and to support international aspects of drug cases.

Additionally, coordination among agencies investigating money laundering violations is also key to the Government's overall effectiveness. Much depends on the commitment of each signatory agency to the Memorandum of Understanding Between the Secretary of Treasury and the Attorney General Pursuant to the Money Laundering Act of 1986 to adhere to its provisions. Coordination is essential to ensure that one agency in pursuit of money launderers does not preemptively conclude the investigation without efforts to determine the scope of the greater conspiracy which employs the services of the launderers.

Furthermore, continual coordination, cooperation and dialogue is maintained with the Intelligence Community. As indicated in the January 1990 National Drug Control Strategy, the Administration has proposed a National Drug Intelligence Center (NDIC) to coordinate the collection and the production of intelligence information regarding drug trafficking. NDIC will set drug-intelligence priorities for the Law Enforcement Community. The result will be a more coordinated and efficient use of intelligence resources. NDIC will also provide a new, more comprehensive intelligence product to the agencies and resolve problems of fragmented or incomplete analyses.

This activity should also engender interagency cooperation.

QUESTION: How would you characterize the drug investigation strategies of DEA and FBI, respectively?

ANSWER: The FBI and DEA are the two primary Federal agencies with responsibility for enforcement of Title 21, United States Code. The FBI and DEA, as separate and distinct agencies, utilize different investigative strategies to counter drug trafficking. The FBI, through its National Drug Strategy (NDS), focuses on those major multi-jurisdictional drug trafficking organizations which are responsible for controlling significant illegal drug activity in the United States. DEA also targets major drug trafficking organizations, but it often does so by focusing on individual members of the organization. While the strategies of DEA and FBI are different, they also complement each other.

The FBI's NDS is an enterprise approach (adopted from its Organized Crime program) which includes the targeting of supporting mechanisms of drug trafficking conspiracies, not the least of which are money laundering operations and police and public corruption. DEA's strategy relies heavily upon the use of confidential informants. By targeting individual traffickers, DEA has built a significant roster of informants.

Many times, the case will dictate the type of strategy that is necessary. In situations where the other agency's strategy and resources will benefit an investigation, DEA and FBI will work on the case jointly. Joint investigations have proven to be very successful because the agencies pool their individual strategies and resources.

QUESTION: What projects have the agencies undertaken to enhance coordination?

ANSWER: The FBI continues to assign a supervisory special agent on a full-time basis to EPIC to further coordinate intelligence sharing and dissemination between DEA and the FBI. The FBI's Drug Intelligence Unit maintains continual contact with its counterpart at DEA Headquarters. A supervisory special agent from the DEA Office of the Assistant Administrator for Operations has been detailed to the FBI Drug Section. At the field office level, information is continually exchanged at the initiation of all new drug cases and when new subjects are identified or information of importance is developed.

Additionally, the FBI and DEA participate in many OCDETF cases which require coordination and cooperation amongst the participating agencies in order for the investigation to proceed in as effective and efficient manner possible.

Since 1982, the two agencies have gone to great lengths to facilitate and improve FBI/DEA operations, partially as a result of the efforts of the onetime FBI/DEA Link-Up Committee. Experienced FBI agents and support personnel have been assigned to DEA Headquarters in key positions to assist that agency in budget and records management, legal counsel programs, inspection processes, drug demand reduction and general administration. DEA technical personnel are collocated at the FBI's Engineering Research Facility.

Upon request, the FBI provides DEA assistance in accomplishing court-authorized electronic surveillance installations, writing electronic surveillance affidavits, initiating SWAT operations, and augmenting DEA's ground and aerial surveillance capabilities. In OCDETF cases in which both agencies participate, the FBI provides resources to locate fugitives. Many DEA agents share space in FBI Resident Agencies across the country. Most notably, DEA shares new agent and in-service training facilities at the FBI Academy at Quantico. The FBI has used these and other initiatives to effect economies and enhance the efficiency of drug law enforcement efforts.

National Drug Intelligence Center

QUESTION: The National Drug Control Strategy proposed the establishment of a National Drug Intelligence Center to coordinate the collection and production of intelligence information regarding drug trafficking. It would be under your supervision, assisted by an Advisory Board comprised of representatives from the Drug Czar, Treasury, Defense and Transportation. How do you envision this center functioning?

ANSWER: The Justice Management Division of the Department of Justice recently completed a study addressing the implementation of the NDIC. As described in the study, the NDIC will be an interagency center that provides strategic analyses of major drug trafficking organizations. The NDIC will help remedy three major shortcomings that currently exist in drug intelligence: a lack of Law Enforcement Community priorities to guide domestic and foreign drug intelligence collection; lack of strategic all-source analysis of drug trafficking organizations to support decision-making; and lack of information sharing and coordinated systems development. The NDIC will have five major functions: priority-setting; all-source strategic analysis; liaison; systems development; and legal counsel. It will not duplicate or compete with existing intelligence centers. Its focus will be on strategic intelligence, not tactical.

The principal focus of the NDIC will be to produce comprehensive analyses of priority drug trafficking organizations that pull together information from Law Enforcement and Intelligence Community sources. These analyses will not only describe the structure and operations of these organizations, but also identify key operational targets, assess their vulnerabilities, and pinpoint intelligence gaps. The NDIC analyses will support a wide-scale, concerted attack against these organizations.

The NDIC will not consolidate existing agency information systems into a single integrated database. Rather, it will task agencies to provide information on priority targets and, ultimately, have appropriate access to key drug intelligence databases. The NDIC will build its own database on major drug organizations, drawing from these sources. It will use sophisticated automated systems to manage and analyze the database.

QUESTION: How will it improve interagency cooperation?

ANSWER: The NDIC will be an interagency center with participation by key agencies involved in drug intelligence. An Advisory Board composed of policy-level representatives of the key agencies will play a major role in guiding the work of the center.

Under the auspices of the Advisory Board, the NDIC will set drug intelligence priorities for the Law Enforcement Community. These priorities will help guide foreign and domestic drug intelligence collection, provide a more strategic targeting of collection and analytic capabilities, and help ensure that intelligence shortfalls are identified and overcome. The result will be a more coordinated and efficient use of intelligence resources.

The NDIC will also provide a new, more comprehensive intelligence product to the agencies, and resolve problems of fragmented or incomplete analyses. This activity should also engender further interagency cooperation.

QUESTION: Why is it necessary to establish a new agency?

ANSWER: There is presently no single intelligence center vested with the responsibility for coordinating and consolidating strategic drug intelligence into a usable, "actionable" all-source product. The NDIC will provide a strategic intelligence product that is not now available and, moreover, is not within the charter of any of the existing centers. It will not provide tactical intelligence, as most of these centers do, and therefore will not duplicate their work. The NDIC will both complement and utilize the drug intelligence work of existing centers and agencies. These centers and agencies will be both contributors to and consumers of NDIC products.

Title 21 - Cross Designation

QUESTION: On January 10, 1990, the Justice and Treasury Departments signed an agreement providing for an expansion of the cross-designation process. This will enable 1,000 additional Customs agents to be cross-designated with Title 21 drug enforcement authority. What is the status of the cross-designation of Customs agents? Will Customs agents throughout the country be cross-designated, or only

those in high-intensity areas? How will these cross-designations improve the coordination of narcotics investigations?

ANSWER: On January 10, 1990, the Deputy Attorney General and the Deputy Secretary of Treasury signed an agreement providing for an expansion of the cross-designation process. This expansion will enable an additional 1,000 Customs agents to be cross-designated with Title 21 authority over the next 18 months, for a total of approximately 1,230 cross-designated agents. This agreement was made in order to increase the effectiveness of Federal narcotics enforcement, improve coordination of narcotics investigations, and strengthen the lead agency role of the Drug Enforcement Administration. Furthermore, in conjunction with the next drug strategy, cross-designation will be reassessed after one year.

Prior to this agreement, 230 of the 2,700 Customs were cross-designated. As of mid-June 1990, approximately 1,175 Customs agents had received Title 21 authority. The remaining 55 agents are currently under review, and we expect to cross-designate them shortly.

QUESTION: Under the cross-designation process, Customs agents report to DEA on drug investigations. How is this working in the field?

ANSWER: The cross-designation of additional Customs agents will be made to satisfy existing and future drug smuggling and money laundering needs. These cross-designations will be made both within and outside a task force structure. In some areas DEA and Customs will create additional Narcotics Smuggling and Money Laundering Task Forces. These task forces will be co-chaired by the assistant special agents in charge of DEA and Customs with co-equal rights.

Cross-designated Customs agents shall operate under Customs guidelines and procedures, so long as they are consistent with the Department's policies and procedures. Reporting may be done on a DEA-6 attached to the front of a Customs report. Current guidelines will be used where appropriate for coordinating the participation of Customs agents at locations at which there is no DEA presence. Where appropriate new guidelines will be developed. Guidelines for handling such cases will be determined by the two agencies.

Major cases will be referred to OCDETF as appropriate. Cases that travel between regions will be transferred as appropriate.

Asian Organized Crime

QUESTION: Your budget request for FBI organized crime investigations calls for an enhancement of 172 positions (including 78 agents) and $4.1 million to combat Asian organized crime in the United States. Can you explain the

nature of this growing problem and how you are tackling it?

ANSWER: In December, 1987, the Organized Crime Section of the FBI completed a survey on Asian organized crime (AOC) in the United States which revealed that the overwhelming majority of AOC was confined within Asian/American communities. The report particularly noted the threat posed by Chinese Triads, criminally influenced Tongs, and the Japanese Yakuza, commonly referred to as the Yakuza. Chinese Triad membership is estimated by the Royal Hong Kong Police to be at 80,000 to 100,000. The Japanese Boryokudan is equally large and is believed to control 26,000 legitimate businesses.

Research recently undertaken to update that survey, although not yet completed, indicates that the threat posed to the United States by AOC groups and enterprises is no longer localized. AOC activity is no longer confined to pockets in the Pacific territories, and along the West Coast. AOC's influence spans international borders.

Based upon intelligence assessments, the FBI determined that the potential long range problem posed by AOC groups required the initiation of a limited number of investigations prior to 1990 in order to establish the accuracy of the intelligence assessment and allow the FBI's Organized Crime Section to more accurately predict its longer range resource requirements. These few investigations, conducted using techniques proven in La Cosa Nostra (LCN) investigations confirmed the accuracy of the assessment to date. These investigations uncovered a pattern all too familiar to Organized Crime Program investigators. That pattern is one of major criminal enterprises involved in gambling, extortion, and corruption. A major Southeast Asian money laundering ring was identified, and while investigating an AOC gambling enterprise, FBI agents uncovered activities which led to the WHITEMARE investigation which yielded the largest single seizure of heroin ever.

To facilitate these illegal activities, AOC groups are networking, or interacting, not only with each other but with Colombian drug cartels and the LCN. Association with the LCN will only serve to accelerate the assimilation of AOC groups into the existing criminal infrastructure of the United States.

The Los Angeles Field Office reports it has identified four major Hong Kong Triads and the Japanese Boryokudan operating within its territory. In addition, the Newark Field Office acknowledges AOC problems involving Chinese and Japanese groups which also affect New York, but, due to the extent of the LCN problem it is addressing, is pressed to conduct investigations of AOC. The San Francisco Field Office reports a similar problem. FBI field offices in Houston, Dallas, Minneapolis, and

Washington D.C., also report unaddressed or prolonged investigations of AOC matters.

Available immigration statistics reveal that, between 1970 and 1988, Asian immigrants to the United States were two and one half times that of all immigrants from European and African countries combined for the same time span. With the return of Hong Kong to the People's Republic of China in 1997, it is anticipated that a number of Triad members will attempt to enter the United States. The success the FBI has against Chinese organized crime between now and 1997 could be a factor in the number of Triad members who attempt to enter the United States.

QUESTION: The FBI has received some poor publicity about its number and treatment of minority agents. Do you believe you have sufficient numbers of Asian agents to combat Asian organized crime?

ANSWER: To adequately identify and disrupt the illegal activities of these groups would require the services of personnel familiar with the culture and dialects of the individuals under investigation and, therefore, the FBI has requested additional investigative, language, and special support resources for the Organized Crime Program to address this criminal problem during 1991. The FBI does not hire an agent to conduct solely one type of investigative activity, and therefore would not request an "Asian" agent. Agents conduct the full range of investigations from foreign counterintelligence to applicant background reviews. Based on investigative needs, the FBI may attempt to hire agents with Asian language capabilities and/or a cultural background in Asian matters to address the increasing volume of investigative matters, but at the same time, would attempt to hire language specialists to assist any agent assigned Asian investigative matters to address translation requirements. Presently, the FBI has 123 agents of Asian origin. A number of these agents work on counterintelligence investigations. Additional agents of Asian origin will be valuable in conducting Asian Organized Crime investigations.

Environment and Natural Resources

QUESTION: Your budget requests program increases of 47 positions and $6.6 million for the Land and Natural Resources Division, bringing the Division's request to $43.7 million.

Can you please discuss this increase? I understand that much of the increase is for automated litigation support for the Exxon-Valdez case.

ANSWER: For 1991, 46 of 47 requested new positions are for the Environmental Protection program which includes four sections: Environmental Crimes; Environmental Defense; Environmental Enforcement; and Wildlife and

Marine Resources. The remaining position is to supplement the Division's staff handling its growing automated litigation support (ALS) activities.

All of these sections are currently devoting considerable time to the Exxon-Valdez case -- not only the criminal indictment, but also preparing a civil suit to protect United States interests in the natural resource damage assessments undertaken by the trustees (Commerce, Interior and Agriculture). This a monumental case, certain to set precedent in many cutting-edge evidentiary and economic valuation issues. For that reason, we anticipate a considerable drain on our resources in and well beyond 1991. Of the $6.6 million requested for 1991, some $3.9 million for ALS will be devoted to Exxon-related work. For this work, we have identified the tasks to be performed, engaged a qualified contractor and commenced preliminary assignments; we lack only the funds to go forward pro-actively in 1991. Failure to provide these funds would cause us to lose valuable momentum in this critical, multi-million dollar case, and fundamentally impair our effectiveness because it would force us to delay or abandon critical case preparation.

This litigation is expected to be unprecedented in terms of: 1) the size of the spill (11 million gallons); 2) the ecological vulnerability of the unique, pristine and fragile environment affected; 3) the legal issues of first impression and the number of likely legal charges to be brought; and, 4) the corresponding vigorous defenses raised thereto by one of the largest legal defense teams ever assembled for an environmental case. Among the many necessary tasks that must be undertaken for the successful prosecution of the civil case against Exxon are the following:

-Processing an estimated 1 million documents for the civil case with an average document length of 5 pages, including microfilming and coding all pages, and subsequently loading them into the Department's mainframe computer.

-Providing contract paralegal teams, including a supervisor and three paralegals for each of three teams covering cost recovery, liability and natural resource damages.

-Establishing of a full-text database.

-Tracking the progress of an estimated 150 private civil claims also pending against Exxon and the Federal Government. These private suits may raise legal or factual issues which bear directly on the affirmative Federal case, and therefore require close monitoring on our part.

-Assembling and monitoring the host of Freedom of Information Act (FOIA) requests made of the Department, the Federal trustee agencies (Interior, Commerce and

Agriculture) and a host of other Federal agencies involved in the spill cleanup such as the Navy, Coast Guard, Department of Transportation, Federal Emergency Management Agency, and associated support such as EPA's involvement in restoration of the injured natural resources. Coordination of the FOIA requests is essential in order to prevent duplication of effort and to insure that privileged information is not inadvertently released.

But quite apart from Exxon, the needs of the newly renamed "Environment and Natural Resources Division" are growing exponentially as a result of:

-New legislation and regulations involving environmental laws (eg., Asbestos Hazard Emergency Response Act, Medical Waste Tracking and Ocean Dumping Acts; not included in this budget are resources associated with any new Clean Air Act);

-Burgeoning workload involving Federal facility litigation (e.g., cleanup of Department of Energy nuclear weapons plants and Department of Defense installations);

-Comprehensive Environmental Response, Compensation and Liabilities Act counterclaims involving Federal agencies (e.g., Defense, Energy) when the agency has identified private parties who may have contributed to pollution at the site;

-Natural resource damage claims arising from the recent spate of oil spills, and other referrals from Federal agencies;

-The Administration's initiatives involving "no net loss" of the Nation's valuable yet diminishing wetlands.

Organized Crime Drug Enforcement Task Forces

QUESTION: The Anti-Drug Abuse Act of 1988 directs the Attorney General to submit in the budget request a unified separate appropriation for expenses of the Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. What has been the impact of this requirement on the participating agencies drug efforts? Has the requirement affected the ability of the Department and the agencies to track expenditures of drug funds?

ANSWER: The establishment of the consolidated appropriation for the Organized Crime Drug Enforcement Task Forces (OCDETF) has unquestionably had a very positive impact on the management of resources devoted to this critical program in the War on Drugs.

In response to the mandate of the Anti-Drug Abuse Act, the Department's 1990 budget contained the first such unified request. Recognizing the need to enhance policy development and strengthen oversight of the OCDETF program, the role of two Washington-based groups has been clarified. The Executive Review Board (ERB), chaired by the Deputy Attorney General, consists of the heads of each of the 11 participating Federal agencies. The ERB will address policy issues related to the OCDETF program, and will annually make recommendations regarding appropriate resources levels to be included in the budget request. In addition, the ERB will recommend, as necessary, the redirection of resources among agencies and among the 13 established Task Force regions. Assisting the ERB is the Washington Agency Representatives Group, consisting of senior program managers from each participating agency. The revitalization of these two groups will contribute further to the interaction and participation of the agency heads in the consolidated budget process.

Prior to the implementation of the consolidated appropriation, each participating agency included the resources necessary for the OCDETF program in its own budget. Now these agencies, from the Departments of Justice, Treasury and Transportation, must seek reimbursement for their contribution to the program. This fact alone has resulted in an increased focus on OCDETF resource accountability.

We believe that the process we have established for 1990 will not only satisfy the normal budgetary requirements, but will also serve as the basis for development of a resource allocation and monitoring system which will serve as an important program management tool.

FBI Drug Strategy

QUESTION: The FBI has a strategy of focusing on the elimination of major drug organizations. However, drug smuggling can be done with relatively low investment and a phenomenally high return. One could argue that when one organization disappears, new groups can quickly emerge to replace it.

If this is the case, can the FBI strategy of conducting long-term investigations of these groups succeed over the long term?

ANSWER: The FBI's approach is an organizational one, which is aligned with the original Attorney General mandate in 1982 to apply to drug matters the same focus used so successfully against traditional organized crime. Drug trafficking is more than just smuggling and distributing drugs. It includes money laundering and other financial frauds; extortion and murder; mail and wire frauds; and corruption of public officials. These are violations in which the FBI has decades of experience, touching on the FBI's White-Collar Crimes, Violent Crimes and Major Offenders, and Organized Crime Programs, as well as the Drugs Program. Therefore, the FBI utilizes its multi-mission role and the wide experience gained from it, to address all components of drug enterprises. The FBI's NDS highlights quality over quantity when it comes to arrests, convictions, and asset seizures -- to make an impact where it really counts: against drug trafficking organizations at their leadership level.

Cocaine, heroin and marijuana -- drugs primarily constituting America's drug trafficking problem -- are all replenishable commodities in the seemingly unending supply. Drug seizures are not the only solution. Dismantling organizations have a long-term effect. Organizations, unlike individual traffickers, are not easily replaced, especially when the leadership structure is prosecuted and their methods of communication and money laundering apparatuses are uncovered and destroyed.

Until recently, the organizational approach to drug trafficking was unique to the FBI. Now, it is highlighted by the Office of National Drug Control Policy in the most recent National Drug Control Strategy and in the Guidelines of the Organized Crime Drug Enforcement Task Force Program.

The FBI also recognizes that the ultimate answer to drug abuse does not rest solely in drug enforcement by any agency. The FBI recognizes that demand reduction through ongoing education programs and health oriented initiatives are necessary for the long-term diminishment of drug abuse.

QUESTION: Will it materially curb drug importation and dealing or will new groups quickly emerge to fill any gaps?

ANSWER: The FBI's NDS is designed to materially curb not only drug importation and distribution but also other criminal activities that it generates. The objectives of the FBI's NDS are as follows: conduct investigations directed against major cocaine and heroin trafficking organizations on a nationwide basis; seize their illegal profits through forfeiture proceedings; expand and enhance the existing drug intelligence base; identify trends and make projections of organized drug trafficking activities on a national basis; concentrate resources in major centers of drug organizational activities; and provide assistance to other Federal, State and local law enforcement agencies investigating drug trafficking organizations operating in a local and regional area.

With regard to whether or not new groups will quickly emerge, it is the Administration's view that a drug trafficking organization dismantled is a drug trafficking organization destroyed. Its principals are arrested, their conspiratorial infrastructure incapacitated, and much of the fruits of their illegal activities are seized. The arrest of an individual alone has little lasting effect on an organization. That individual is expendable and easily replaced. Drugs interdicted at the borders or seized inside the United States are replenishable and such a loss to a trafficking organization is simply the cost of doing business. While individuals are somewhat replaceable, an organization is not as easily replaced nor as quick to emerge. The FBI's NDS is not an inert plan, but one which is continually honed to improve its effectiveness in addressing major drug trafficking organizations.

State and Local Anti-Drug Abuse Grants

QUESTION: The Department is requesting $490 million for anti-drug abuse grants to State and local law enforcement agencies, an increase of about $45 million over the 1990 appropriations. In previous years, the Administration had proposed to terminate funding for this program.

Is this Administration now committed to the concept that the Federal Government must provide funding to enhance State and local law enforcement?

ANSWER: President Bush displayed his support for the Anti-Drug Abuse State and Local Grant Program in his 1990 budget proposal. The request for 1991 represents a continuation of that commitment. This Administration recognizes that a comprehensive, coordinated approach is needed to combat the nation's drug problems. To be successful in the war on drugs, we must all work together and combine efforts at all levels of government and within all elements of society. The Administration's recognition of this concept is addressed at length in the 1990 National Drug Control Strategy that was issued in January.

QUESTION: Last year, the Congress delayed until 1991 the requirement that States provide a 50-percent match for the anti-drug abuse grants. The 25-percent match requirement therefore is in effect this year. There is considerable support in Congress for again delaying the 50-percent match requirement and continuing instead the 25-percent match.

What is the Department's view on the match requirement?

ANSWER: I believe that the Federal and State governments should be equal partners in the war against drugs. States and localities should be able to meet the higher 50-percent match requirement. Since the States and units of local government have primary responsibility for drug control efforts in their jurisdictions and have been aware of the escalating match requirement since 1988, additional matching funds should already be incorporated into their budget development process for 1991. Further, State and local jurisdictions have revenue sources available that provide significant potential matching funds. As an example, the Federal Asset Forfeiture Equitable Sharing Program provided $157.3 million to States and localities in 1989. Approximately $190.5 million is expected to be available for distribution to States and localities in 1990 and $200 million in 1991. In addition to the Federal program, most States have asset forfeiture statutes. State statutes differ in the extent to which seizures may be made and in the purpose for which cash proceeds may be used; however, forfeitures under State statutes may offer another viable source of additional resources that could be used for matching funds. (It should be noted that if a portion of the funds allocated to a State will not be required, the Director of the Bureau of Justice Assistance will award that portion to urban, rural, and suburban units of local government or combinations thereof, giving priority to those jurisdictions with greatest need. Of course, these units of local government would have to provide the same match as would otherwise have been required of the State.)

The purpose of this grant program is to promote innovative programs and programs that offer a high probability of improving State and local drug control and system improvement efforts, with the intent that recipient agencies eventually assume full support of the programs. This intent is evidenced by the legislative history accompanying the Anti-Drug Abuse Act of 1988. For instance, the initial Senate proposal of a comprehensive drug bill, titled the Omnibus Anti-Substance Abuse Act of 1988, states "[t]he graduated matching fund approach reflects the purpose of this grant program to use Federal resources to promote innovation and information-sharing among the States, thereby enabling the States to assume the funding of those activities most effective within that State." This is also the rationale for the statutory four-year funding limitation for grant projects. The Federal Government should not bear an unfair share of the financial burden for grant programs; there should be an equitable partnership between State, local and Federal governments, particularly in this era of fiscal restraint.

Administratively Uncontrollable Overtime

QUESTION: As you know, last year Congress passed legislation which had the effect of increasing overtime costs (AUO) for law enforcement functions. On pages 16 and 17 of your testimony, you explain that in order to absorb the overtime costs for FBI, rather than cutting back agent positions, you will fill new positions in the last quarter of the year, rather than midway through the fiscal year.

Won't the decision to hire more agents later in the year rather than fewer agents earlier in the year result in increased base costs for fiscal year 1992?

ANSWER: No. Whether the new positions, both agent and support, are brought on midway in fiscal year 1991 or in the fourth quarter will have no effect on the level of funding requirements for 1992. It is true that the increase needed by the FBI to annualize these new positions in 1992 will be somewhat greater than if the positions were brought on halfway in 1991.

QUESTION: Earlier this year, I joined Senators DeConcini, Domenici and Hollings in writing to Director Bennett to suggest that Special Forfeiture Funds might be better spent to cover administratively uncontrollable overtime (AUO) costs than for establishing the proposed National Drug Intelligence Center. On April 11, Director Bennett advised us that he was proposing that $14 million from the Special Forfeiture Fund be allocated to Justice for drug-related pay and AUO costs.

What is the status of this proposal? Will it make a dent in your AUO problem?

ANSWER: The $14,126,000 referred to in Director Bennett's letter represents the drug-related funding that the FBI, INS and OCDETF would absorb because of increased costs of the AUO legislation (P.L. 101-173) and the 1991 pay raise. I am not aware that any new developments have occurred since Director Bennett's April 11, 1990 letter.

SUBCOMMITTEE RECESS

Senator RUDMAN. We will conclude the hearing until 10 a.m. on May 1, when the subcommittee will hear the Supreme Court of the United States, the Federal judiciary, and the Federal Trade Commission. The hearing is concluded.

[Whereupon, at 11:23 a.m., Thursday, April 26, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, May 1.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1991

TUESDAY, MAY 1, 1990

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:01 a.m., in room S-146, the Capitol, Hon. Dale Bumpers presiding.

Present: Senators Bumpers, Rudman, and Stevens.

THE JUDICIARY

SUPREME COURT

STATEMENT OF JUSTICE SANDRA DAY O'CONNOR, SUPREME COURT OF THE UNITED STATES

ACCOMPANIED BY:

JUSTICE ANTONIN SCALIA, SUPREME COURT OF THE UNITED STATES
LARRY AVERILL, ADMINISTRATIVE ASSISTANT TO CHIEF JUSTICE
CHARLES E. CORNELISON, CHIEF DEPUTY MARSHAL
TONY DONNELLY, DIRECTOR, BUDGET AND PERSONNEL OFFICE

OPENING REMARKS

Senator BUMPERS. Senator Hollings said that he needed a heavy hitter to handle the Supreme Court, so he asked me to chair this morning.

We begin with the Supreme Court, whose 1991 request totals $22,677,000. The budget request for the Court is very modest—these are Senator Hollings words—"representing an increase of only $814,000 or a 3.7-percent increase over the amount provided in 1990."

PREPARED STATEMENTS

Appearing on behalf of the Supreme Court is Justice Sandra Day O'Connor and Justice Antonin Scalia. We welcome you both here this morning, and we would appreciate your summarizing your statements for us. Your full statements will be printed in the record.

[The statements follow:]

STATEMENT OF JUSTICE SANDRA DAY O'CONNOR

Mr. Chairman and members of the committee, Justice Scalia and I appreciate this opportunity to appear before your committee to address the budget requirements of the Supreme Court for the fiscal year 1991.

We have with us today Larry Averill, Administrative Assistant to the Chief Justice; Charles Cornelison, Chief Deputy Marshal of the Court; and Tony Donnelly, Director of Budget and Personnel.

As usual, the budget request is divided between the salaries and expenses of the Court and Care of the Building and Grounds. The total fiscal year 1991 budget for Care of the Building and Grounds is $3,453,000. My statement will be limited to the salaries and expenses of the Court. Mr. George White, Architect of the Capitol, will submit a statement to the subcommittee regarding his segment of the total budget.

Our total fiscal year 1991 budget estimate for salaries and expenses is $19,224,000. This is an increase of $1,727,000 over the budget authority for 1990. The 1990 budget authority has been adjusted to reflect a proposed supplemental appropriation for $63,000 to fund the fiscal year 1990 cost of the increased pay of justices and statutory court officers.

The proposed fiscal year 1991 budget includes $1,912,000 in base adjustments. The majority of the base adjustments, $1,730,000, represent uncontrollable increases in salary and benefit costs. The remaining base adjustments of $182,000 are for inflationary increases in various fixed costs. Increased funding for base adjustment items allows us to keep up with the rising costs of normal activity.

We have reduced the budget base by $285,000 which represents four non-recurring projects funded in fiscal year 1990.

We are proposing an increase of $100,000 to begin the first phase of a three year computer improvement program. The recurring increase will fund the replacement of 20 Hewlett-Packard terminals per year with personal computers. This program prepares the Court for anticipated changes in the computer industry involving a transition of word processing from central minicomputers to personal computers. The justification for this item appears on page 1.10 of our budget submission.

The Court appreciates the committee's favorable action on our fiscal year 1990 budget request. Thanks to the committee's action, the Court is able to carry out its important work without implementing drastic cuts in personnel and services.

This concludes my prepared statement Mr. Chairman. Justice Scalia, the officers of the Court who are present, and I will be happy to answer any questions that you may have.

STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

Mr. Chairman and members of the committee: I am pleased to present the fiscal year 1991 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1991, we have requested a total appropriation of $3,453,000. This represents a net decrease of $916,000 under the total of $4,369,000 for 1990. The net decrease of $916,000 is represented by increases to the base in the amount of $99,000, which is offset by decreases totaling $1,015,000 for two non-recurring projects funded in fiscal year 1990.

Increases requested are: $71,000 for mandatory increases, including the January 1990 cost-of-living raise and within-grade salary advancements authorized by law; $16,000 to meet an anticipated cost-of-living raise in January 1991, as recommended by OMB; $4,000 for one extra compensable day in fiscal year 1991; $1,000 for payment to the Federal Employee's Health Benefits Fund; $2,000 for increased contributions to employees' retirement funds; and $5,000 to offset increased costs due to inflation for goods and services procured for two annual recurring maintenance items, supplies and materials and care of the grounds.

That concludes my statement on the needs for fiscal year 1990 for the Care of the Supreme Court Building and Grounds.

I would like now to present a summary of another item, the construction of an office building for the judiciary.

JUDICIARY OFFICE BUILDING DEVELOPMENT ACT

As the committee will recall, Public Law 99-229, approved December 28, 1985, authorized the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice of the United States, to study alternatives for the construction of a building or buildings on Squares 721 and 722 adjacent to Union Station to house the Administrative Office of the United States Courts, related judicial activities and other such tenants that may be appropriate. Options for financing the construction, including non-Federal sources, were also to be studied.

Public Law 99-349, approved July 2, 1986, appropriated $1,300,000 to the Architect of the Capitol for the authorized study. The report to the Congress, as required by Public Law 99-229, was prepared and transmitted to Congress on August 10, 1987. In that report, we recommended that a public-private arrangement be authorized whereby the building would be constructed by a private developer with the Federal Government as the major tenant. Title to the land, which is part of Capitol Grounds, would remain in the Government, with the building leased to the developer but reverting to Federal ownership in 30 years or less. No additional appropriated construction funds would be required.

Pursuant to that report, the Congress enacted Public Law 100-480 to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union Station to house offices for agencies in the judicial branch, and for other purposes. This law is titled the "Judiciary Office Building Development Act."

This act provided for a process whereby the five alternate proposals that were selected pursuant to Public Law 99-229 were revised by the five original competing developers and resubmitted to meet certain new requirements and then reexamined. Based on the revised proposals, a preferred design was submitted to the Chief Justice, pursuant to the provisions of Public Law 100-480, and he approved the design. The next step in the selection process, submission of this recommendation to the newly created Commission for the Judiciary Office Building, was then completed. Finally, selection of a developer-architect team was made and announced. The selected team consists of Boston Properties and its architect, Edward Larrabee Barnes.

Public Law 100-480 also provided that the balance of the $1,300,000 provided by Public Law 99-349 to carry out the provisions of Public Law 99-229 be transferred to an account under the Architect of the Capitol to provide for design review, construction inspection, contract administration and other related project costs. That account was established; and the funds, approximately $645,000, were transferred.

The financing for the Judiciary Office Building transaction closed on August 15, 1989. The transaction has been structured as a ground lease for 30 years of the government-owned land by the Architect of the Capitol (AOC) to Boston Properties, which is acting as the development manager for the AOC under a development management agreement. In turn, Boston Properties has master leased the entire building to the AOC, which will pay rent on the entire structure collected from the judiciary branch and other governmental tenants. This future rental stream has been securitized in the form of a public offering of securities underwritten by two Wall Street investment banking firms and resold to investors. The proceeds of such financing have been received and are now funding the design and construction process. The interest rate on the repayment of this financing is only 37.5 basis points above the 30-year Treasury bond rate at the time of the closing of the transaction. The design process is proceeding on schedule, and we expect to break ground in mid-April, with occupancy by judiciary branch tenants scheduled in the last calendar quarter of 1992. We estimate that the judiciary branch tenants will be occupying floors three through seven, almost one-half of floor two, and significant portions of the ground floor and concourse levels.

Public Law 100-480 will provide office space for the judiciary on a reimbursable basis in the form of rent that will be below market rates. In effect, the value of the land the government furnishes (and the tax-exempt status of the project) is the primary basis for such reduced rental rates. The rental cost is intended to be paid for in the same way as the judiciary does now for leased space. As I have mentioned, within 30 years title to the building reverts to the government. In other words, the government by paying rent will in effect be amortizing its own mortgage rather than a private developer's mortgage. As these rent costs repay the financing, appropriations for leasing the space will have to continue to be provided for in future budgets. But they will not be as large as under the current system of renting in privately owned buildings. And, the government will own the building when the financing is entirely repaid.

STATEMENT OF JUSTICE O'CONNOR

Justice O'CONNOR. Thank you, Mr. Chairman.

Justice Scalia and I are pleased to be here again to make the budget presentation. We have with us several members of the Court staff, including Larry Averill, whom I believe you know, and we have Mr. Cornelison representing the marshal and Tony Donnelly, who is Director of our Budget and Personnel Office.

I would like to start with just a thank you. Your committee was very helpful in the Court's budget problems last year. We think we are appropriately funded to fulfill our essential programs, and are most appreciative of the consideration shown by this committee.

In preparing the budget for the coming year, we have requested some additional funds to meet mandatory pay increases and related benefits for all the Court's employees. Included in that, as you probably know, are some pay increases for the justices, as well, with all the related increases.

We have asked for only one new item in the budget: It is that item that I would like to explain a little bit. The Hewlett Packard mainframe computer which serves the Court staff, other than the justices, is moving away from that centralized software system to individual personal computers. We need to adapt to that switch at the Court, and we are proposing to phase it in over a 3-year period. We are asking for $100,000 this year to start that phased-in program.

That is the only new item in the budget other than the mandatory pay increases. If it is all right, Mr. Chairman, I won't read that statement; I will just submit it to you.

FISCAL YEAR 1990 FUNDING

Senator BUMPERS. Thank you very much, and it will be inserted in the record in full, of course.

Justice Scalia, do you have anything to add to that?

Justice SCALIA. Only to second Justice O'Connor's thanks. We needed help last year—we had some real needs that were hurting us. That problem was solved by last year's appropriation, and we are very grateful for that.

ATTORNEY ADMISSION FEES

Senator BUMPERS. In that connection, let me ask you the first question: Do you remember last year, Justice O'Connor, we allowed you to retain about $400,000 in lawyer admission fees?

Justice O'CONNOR. Yes.

Senator BUMPERS. How has that worked out?

Justice O'CONNOR. We are just starting in it or, rather, over the last couple of months. We got a slow start in implementing it. It is going to be fine. We will pay all of the expenses of attorney admission out of that, which totals at least $90,000 a year.

We will make some other expenditures in the library, which is open to the use of members of the Supreme Court Bar, as well as the justices, and we have several other proposed uses. It is very helpful.

CASELOAD

Senator **Bumpers**. I, frankly, was pleased to see that your case load is going to be considerably reduced this year.

Justice **O'Connor**. Yes; we are, too. [Laughter.]

Senator **Bumpers**. I suppose that the Court can reduce its case load any time it chooses by simply denying certiorari more often. But I am pleased that the workload is down, because I know that it has been staggering.

I am curious about the number of applications, the number of appeals, and petitions, how they compare. Is there a reduced number of petitions and appeals in the Court now?

Justice **O'Connor**. There is an overall increase in filings. There is a 6-percent drop in paid petitions for certiorari, but there is a 24-percent increase in in forma pauperis petitions. That is an overall increase in filings.

We see a decrease in the number of our argued cases, I think in large part because of the change that Congress made in eliminating our mandatory appellate jurisdiction. In 1988, for example, we had 35 paid appeals as opposed to petitions for certiorari.

In the 1989 term, we had only seven paid appeals. Now, that is a substantial drop and accounts for a good portion of the somewhat smaller number of argued cases this term.

PERSONAL COMPUTERS

Senator **Bumpers**. I certainly am pleased, for whatever reasons, that your workload will not be quite as heavy as it has been.

My final question, I believe, is on the PC's, the personal computers that you want to buy. Are these going to be used solely for word processing, or do they have other applications?

Justice **O'Connor**. No; they will not be used only for word processing. They have various applications in the accounting and recordkeeping functions of the Court.

Senator **Bumpers**. Do you expect to realize any savings from that or is that just going to make things a little more efficient?

Justice **O'Connor**. I doubt very much that we will realize any savings from that. We are pretty much forced into it by the fact that the computer supplier is withdrawing from the mainframe market, in effect, and pushing everybody into PC's.

Senator **Bumpers**. In my office I am the only one who does not have one. I do not know how to use one. I am too stupid to learn how to use it.

Senator **Rudman**. You are lazy.

Senator **Bumpers**. With that, I will turn it over to you, Senator Rudman. [Laughter.]

COMPACT SHELVING

Senator **Rudman**. Stage whisper here.

I am pleased that the funding we provided last year is going to be sufficient. You are going to direct some of that into compact shelving for your library, I believe.

Justice **O'Connor**. Yes; that is correct.

Senator RUDMAN. I was wondering whether the storage space and the compact shelving will be adequate and up to the standards that you want, or will additional funds be necessary in the future?

Justice O'CONNOR. We are installing, now, some of that compact shelving. The shelving is being installed at the basement level rather than upstairs, as we had originally planned, because George White advised that the weight of it would be somewhat risky to put it upstairs.

So we are installing it down at the basement level. We are going to need additional storage. The problem with libraries is that you keep getting books and you have to have a place to put them. [Laughter.]

Senator RUDMAN. Judges keep writing decisions.

Justice O'CONNOR. And we keep writing opinions and filling them up.

Justice SCALIA. They are getting shorter and shorter, they really are.

Senator RUDMAN. They are? Well, I was going to talk to you about that, Judge, actually.

Senator BUMPERS. The chairman of the board of the University of Arkansas said one time on a request for more money for the library: "I don't know why they want more books. They ain't read the ones they got." [Laughter.]

SECURITY NEEDS

Senator RUDMAN. I wondered whether you have any more needs in the security area. About 4 years ago, we started to address this matter because of the heightened problem. I drive by the Court a fair amount, and it looks like the exterior security is in good shape. Have you finished your security program? Are the marshals happy with it?

Justice O'CONNOR. Mr. Cornelison, do you have something to contribute to that?

Mr. CORNELISON. We are not quite completed. We are going to have a study ongoing presently to have some more security magnetometers throughout the building.

Senator RUDMAN. As I understand it, there is no request in this budget for that. In other words, the study will be completed and then you might ask for it in the future?

Mr. CORNELISON. We wanted to make sure that whatever we asked for we actually needed.

Senator RUDMAN. We are very concerned in this subcommittee about security for the entire Federal judiciary. We appropriated money in this supplemental, that is going to pass, hopefully today, for the Marshals Service because of the increased judicial security requirements in some of the circuit courts as a result of the horrible problems that have occurred in the past year. To the extent that you are going to need more funds for security, we would like to know about it.

Justice O'CONNOR. Senator Rudman, one of the things that you did that helped us was to enable us to hire the police for which we had budgeted. That keeps the marshal's staff at full strength, which is a very important part of the security in our building.

CONGRESSIONAL REPORT LANGUAGE

Senator **Rudman**. Justice Scalia, since we never like to have hearings that are less than 15 minutes in length, and we have 4 minutes left——

Justice **Scalia**. You want me to sing something? [Laughter.]

Senator **Rudman**. If we had a piano in the room, I would like you to play. [Laughter.]

This committee understands the protocol. No one would ever ask a case-specific kind of question, at least I certainly would not. But I am very interested, and I believe it would be interesting for my colleagues and for the record of this hearing, in your approach, your textual approach, I guess, to congressional report language vis-a-vis what is in the statute itself. That is one of your favorite subjects. [Laughter.]

I understand what you are driving at. I am familiar with your dissent in *Blanchard* v. *Bergeron,* [109 S.Ct. 939 (1989)]. That was not a dissent, but a concerning opinion.

Senator **Bumpers**. I am more familiar with the dissent in the *Missouri* v. *Jenkins* case.

Senator **Rudman**. We won't talk about that. We will talk about that upstairs.

It is a very interesting issue, one that we grapple with. It is not only report language, of course. We have colloquies on the floor quite often that are most fascinating. I heard one just a week or two ago where two Members of the Senate had a great disagreement and came to an agreement and had a colloquy. Without going into great detail, the colloquy sounded something like this: The first Senator said that, "You agree with me that two and two is four." And the other Senator said, "We are in total agreement that two and two is six." The colloquies just passed each other like ships in the night, and we could not expect a court to make much of it, but that is not report language. Could you give us a short summation of your views?

Justice **Scalia**. You really want me to do this?

Senator **Rudman**. We have time, a little time, this morning.

Justice **Scalia**. Let me preface it by saying that my views are not shared by all my colleagues, probably not entirely shared by any of my colleagues, so that there is disagreement among judges on the point—just as I think there is disagreement among the Members of Congress, because I have spoken to some of them—or more precisely, been spoken to by some of them—who are very enthusiastic about the use of committee reports and legislative history and by others who are not.

My point of view is not that legislative history is always unreliable and is always unhelpful; it is simply that I can't tell when it is reliable and helpful and when it isn't. One doesn't know. The theory of using it is that that is presumably what informed the Members of Congress when they voted for the bill—because that, of course, is the effective action, the vote by the people's representatives. Once upon a time, I think, one could be fairly sure that at least the committee reports did represent an effort to inform the Members of Congress on what they were about to vote on. That is why they were written.

Increasingly, as the Court used them more and more, ironically, they became less and less reliable, because more and more things were included, not in order that the Members of the House and Senate could read them and understand the bill, but explicitly in order to affect the Court. So we were no longer looking at documents that were genuinely part of the legislative process in the sense of being genuinely designed to inform the people who vote, but, rather, something that was there only so that the Court could use it.

As I say, sometimes that is where the real compromises are made, I suppose, and the rest of the Congress may approve it. But I, at least, can't tell when it is good history and when it is bad history, so I try not to use it at all. I also think that that approach may impose a useful discipline on draftsmen. If they know that the Court will use the statutory language above all, anything that is ambiguous will more likely be clarified.

FLOOR DEBATE

Senator **Rudman**. I take it you would draw a substantial distinction between the report language and written colloquies on the one hand, and true legislative debate that was engaged on an issue as to what——

Senator **Bumpers**. Senator Rudman, if you will yield for a question at that point. I find this very fascinating. You have no way of knowing in the legislative history whether a colloquy is extemporaneous or whether it has been prepared in advance and just thrown into the record.

Justice **Scalia**. No, no, sir, and I have no way of knowing who was present. You gentlemen, are here now; you are not on the floor. Congress does a lot of its business, some of its most important business, in committee. I don't know if there are just two people there when the colloquy occurs, and if that is the case, I have no reason to think it is the basis on which the rest of the House voted.

Senator **Rudman**. But when reading the record of a very contentious debate on a very important issue that is truly engaged versus report language versus colloquies, would you make a distinction between them at all?

Justice **Scalia**. I agree with you that one could probably identify a few clear examples in which the floor debate is where the real crafting of the legislation occurs. Everybody is there, everybody is listening. You can read the debate, and a lot of people participate—although you never know exactly how many are present. My feeling is that those situations are few enough and far enough between that the benefit to be derived from using them is outweighed by the uncertainty that is injected into the whole process by having to figure out which is good legislative history and which is bad legislative history.

So I try to avoid using it whenever I can.

DRAFTING LEGISLATION

Senator **Rudman**. It puts a high burden, and properly so, on drafting legislation, which, of course, is precisely what we have not been doing around here. In my own view, having drafted legislation in my prior life when I was Attorney General of the State of New Hampshire, I find that legislation is drafted here very uniquely. Quite often, in crafting legislative compromises, the language is so tortured that I sometimes wonder if anybody knows what we meant.

Justice SCALIA. Legislative draftsmanship is very hard work if it is to be done right. I just want to add that my view is not as—what should I say—eccentric as one might think. It is only in very recent years that the Court has used legislative history to the enormous extent that we do. There are opinions by Frankfurter and by Jackson that criticize the Court's use of it back then—and back then its use was not as extensive as it is now.

Senator RUDMAN. I appreciate your answer very much. That does give us a sense of how you feel and tracks what I have heard. I would point out in the way of humor that last year, when we tried to find some way to accede to your requests that we allow you to use your fees for the library, we put it in report language. [Laughter.]

I thank you very much.

LEGISLATIVE HISTORY

Senator BUMPERS. Just a couple of other questions. I might just pursue what Senator Rudman was talking about, Justice Scalia. Obviously, the way you treat legislative history is your prerogative. But I have always believed, since I was taught statutory interpretation in law school, that legislative history is important. It seems to me to say categorically that just because sometimes it is contradictory one should never look at it is a very strict, strict view. From my standpoint, based on my tenure in the Senate and having watched legislative history being made, I can assure you that you are on solid ground a lot of the time.

But I would also say that there are many times when legislative history can be very instructive, and to dismiss it all categorically, I think, can cause an erroneous interpretation. Both Senator Rudman and I know that at 2 o'clock in the morning, somebody can say, "I want to ask the distinguished floor manager, does this phrase mean this or not, because your answer is going to depend on whether I vote for the bill and whether or not we are going to get out of here soon and whether I am going to filibuster."

Now, you can get a straight answer very quickly at 2 o'clock in the morning when you are threatening to filibuster. It is difficult for judges to know whether that happened at 2 o'clock in the morning or not and the conditions under which it happened. But by the same token, I think using common sense and what the thrust of the legislation was, the tone of the legislative history, what the floor manager is saying, can be very helpful.

Senator RUDMAN. And probably more than the report language, I would say, because—if I could interpret for a moment.

Senator BUMPERS. Sure.

COMMITTEE REPORTS

Senator RUDMAN [continuing]. Justice Scalia's comments in the *Blanchard* case were very interesting. He said:

> As anyone familiar with modern-day drafting in congressional committee reports is well aware, the references in the committee report were inserted at best by a committee staff member on his or her own initiative and at worst by the committee staff member at the suggestion of a lawyer-lobbyist and the purpose of those references were not apparently to inform the Members of Congress what the bill meant, * * * but rather to influence judicial construction.

I do not disagree with that, in many cases, and that is why I draw a distinction between what we find in our reports here and what we find in a truly engaged debate. Take a look at the Clean Air Act. I am sure you will be taking a look at the Clean Air Act. [Laughter.]

Justice SCALIA. I have no doubt.

Senator RUDMAN. When that finally comes to the high court, I dare say that some of the debate on things like toxins and acid rain and what was meant by "this" and "that" are going to be instructive. I would agree with you that everybody in town is trying to get his or her view in that report language and we sit at markups and people say, "I offer report language," and in the interests of time, much of it is accepted.

I guess that I tend to agree with you on report language in many cases. I would say there are exceptions, but I would certainly think that there is some legitimate legislative history being made on the Senate floor on all of these issues.

Justice SCALIA. Of course, Senator, I am sure you know this: In our ranking of legislative history, what is considered the most reliable by those who use it is the committee report, and the floor debate is not considered terribly reliable.

Senator RUDMAN. I know.

Justice SCALIA. I happen to agree with you that you are likely to find a nugget now and then—more often in the floor debate than in the rest. But in response to the chairman's remarks: I realize that it is useful now and then, but one has to make the judgment net, not item by item. I have just come to the conclusion that net, it is not worth it. You can't imagine unless you have done my job—and I used to do it the other way—how much time it takes to go through all that legislative history and to try to pick out the nuggets.

It makes litigation enormously expensive, not only for the judges, but for the litigants that have to deal with it. They can't just read the statute. If it is a massive piece of legislation like the Clean Air Act, they have to spend hours of expensive time.

I'm sorry.

Senator RUDMAN. I asked the question.

Justice SCALIA. You pushed the button, Senator, I didn't.

Senator BUMPERS. I am glad that everybody on the bench does not share your view on that. [Laughter.]

FLOOR DEBATE

I was over to the Court recently to listen to the oral arguments on the so-called Equal Access Act. It was the *Prayer Group* case, and I noticed all the attorneys making those arguments were saying, "Senator so-and-so said on the floor, such-and-such and so-and-so said so-and-so." One of the Senators they quoted probably had less knowledge of what that bill was about than anybody I know, yet he was using——

Justice **Scalia**. Who was that, Senator? [Laughter.]

Senator **Bumpers**. That would be a terrible thing for me to say. You go back and read the Record and you will find out who it was. [Laughter.]

Justice **Scalia**. Anything else?

Senator **Bumpers**. One more question. [Laughter.]

Senator **Rudman**. We ought to quit right here.

INTERCIRCUIT CONFLICTS

Senator **Bumpers**. The Federal Court Study Commission on these intercircuit conflicts.

Justice **O'Connor**. Yes.

Senator **Bumpers**. There was a recommendation, Justice O'Connor, that the Court might consider an en banc court of appeals——

Justice **O'Connor**. Yes.

Senator **Bumpers** [continuing]. To resolve those appeals. Has anything happened on that?

Justice **O'Connor**. No; nothing has happened on that, as yet. That, also, is a subject on which the Court is divided, much as it is on how much legislative history to employ.

I, for one, think that it will be appropriate at some time to allow our Court to empanel appellate court judges for the purpose of referring some of these intercircuit conflicts to them, but nothing has moved yet.

Senator **Bumpers**. One thing that has always been offensive to me is where the Government loses a case at the court of appeals level, and they don't go any further because they want it to stop right there because they lost.

Justice **O'Connor**. Right.

Senator **Bumpers**. I wish there were some way we could force them to proceed with an appeal. Some of those things are fairly critical, and they ought to be resolved. I think the Government has an obligation to go to the Supreme Court and try to get it resolved.

But I was just curious as to whether anything had happened on that. Thank you both very much for being here.

Justice **O'Connor**. Thank you very much, Mr. Chairman and Senator Rudman. Thank you. Thank you. Good to see you.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Bumpers**. Thank you. There will be some additional questions we will submit to you for your response in the record.

[The following questions were not asked at the hearing, but were submitted to the Supreme Court for response subsequent to the hearing:]

Questions Submitted by Senator Ernest F. Hollings

SECRETARIAL POSITIONS

Question. As a result of testimony presented at last year's hearing where we learned of the Justices' shortage of secretaries, $106,000 was included in the fiscal year 1990 bill to fill vacant secretarial positions. What is the status of the filling of these vacancies?

Answer. The additional $106,000 appropriated in fiscal year 1990 has funded the filling of three positions in the secretarial support unit as well as an Assistant Secretary in a Justice's Chambers. The secretarial support of the Justices has improved as a result.

LIBRARY COMPACT SHELVING

Question. Last year, the committee included $110,000 in the fiscal year 1990 bill for library compact shelving. What is the status of this project?

Answer. The Court has awarded the contract for the purchase and installation of the compact shelving that is being installed now in the Court's basement.

CASES REVIEWED

Question. I see from the budget justification that the number of cases granted review by the Supreme Court between the 1988 and 1989 terms decreased by 32. (Down to 115 in 1989 from 147 in 1988) What has caused the reduction in cases granted review during this time?

Answer. There has been a 6-percent decrease this term in the number of paid petitions for certiorari, but a 24-percent increase in the number of in forma pauperis petitions. That results in an overall increase in the number of filings.

There is a reduction in the number of argued cases this term which may be due in large part to the change made by Congress eliminating our mandatory appellate jurisdiction. In the 1988 term, for example, we had 35 paid appeals on our calendar. In the 1989 term, we had only 7 paid appeals. It is too soon to know whether the smaller number of appeals will be reflected in a consistently lower number of argued cases.

INTERCIRCUIT CONFLICTS

On April 2, 1990, the Federal Courts Study Committee released a study addressing the matter of intercircuit conflicts. The study proposed several courses of action including a congressionally mandated pilot project whereby the Supreme Court could refer selected cases in conflict to an in banc court of appeals for disposition and creation of national precedent on the conflict issue.

Question. Do you believe the number and nature of such conflicts are such that they are a serious concern?

Answer. I believe that the number and nature of these conflicts are troublesome, but I don't think we know enough about them yet to say that they are a "serious concern." The Federal Courts Study Committee recommended that the Federal Judicial Center make a study of the conflicts left unresolved to see just how serious they are in practical terms.

Question. If so, should not the Court review more cases reflecting such conflicts?

Answer. The Court is pressed by at least two conflicting factors in deciding whether to review more cases involving conflicts. The first is the fact that since its principal task is to decide important questions of federal law in reasoned opinions, it cannot decide more than about 150 cases each year and many scholars think that it would be better off trying to decide fewer than that number. Pressing on the other side is the fact that there are undoubtedly conflicting decisions among the various federal courts of appeals which the Court does not undertake to resolve. This year we granted review in roughly twenty fewer cases than we usually do, which will mean a smaller number of opinions handed down during this term. If this trend continues, it may mean that unresolved conflicts are on the wane, although in my opinion this would be simply a temporary decline in what is bound to be over the long run a steady increase.

THE JUDICIARY

STATEMENT OF RICHARD S. ARNOLD, JUDGE, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

ACCOMPANIED BY:

WILLIAM G. YOUNG, JUDGE, U.S. DISTRICT COURT, MASSACHUSETTS

L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

BUDGET REQUEST

Senator **Bumpers**. The subcommittee will now hear from the judiciary, whose request for 1991 totals $2,045,214,000. This is an increase of $343 million, or 20 percent above the amount available in 1990, including $24 million recently provided in the supplemental.

Of the $343 million increase requested for the judiciary, all but $106 million is to meet uncontrollable costs. Of the $106 million requested in program increases, the bulk of this request is driven by workload increases, primarily in drug-related cases.

Appearing on behalf of the judiciary is Judge Richard Arnold and Mr. Ralph Mecham, Director of the Administrative Office of the Courts.

Gentlemen, we welcome you here this morning, and we would appreciate your summarizing your statements for us. Of course, your full statement will be inserted in the record.

Judge Arnold?

Senator **Rudman**. There is another judge here also.

Senator **Bumpers**. I'm sorry.

Judge **Arnold**. Mr. Chairman, let me also introduce to the committee, Judge William G. Young of the district of Massachusetts.

Senator **Bumpers**. I apologize.

Judge **Arnold**. He is a member of the Budget Committee of the Judicial Conference, of which I am the chairman. He and Mr. Mecham and I are all here, and we wanted to say a few things by way of a summary. I appreciate your statement that my opening statement will be made a part of the record. We will then answer whatever questions we can answer for the committee.

The first thing I want to say—and I always try to agree with the Supreme Court because that is my job, to agree with the Supreme Court—is that I definitely agree with them as to the thanks that we owe the Congress. Last year we received somewhere in the neighborhood of 96 or 97 percent of our budget request. That was a boon to the Federal court system, but more importantly, to the public, whom we serve. We are grateful to you for that. We know that it is not easy for Congress to perform that kind of action.

INCREASED WORKLOAD

It is essential, I think, that we maintain that as a base for the future, because our workload is increasing markedly. I just want to sketch for a minute or two what I think the leading characteristic of our workload is today, to give you some ideas as to how this is affecting our service to the public.

The most striking aspect of our operation today is drug prosecutions. We have more criminal cases by 56 percent than we had 10 years ago, but the drug cases are up by 229 percent. Now, drug cases approximate 32 percent of all criminal filings in the Federal courts. But of the trials, 44 percent are drug cases. In other words, the drug cases as a group go to trial more frequently than nondrug prosecutions.

Now, that has an impact, and let me add by way of summarizing it, that in our current budget request, $403 million is drug related. That is 20 percent of our entire budget request. That has an impact beyond just the drug cases and beyond just the criminal cases; it has the potential and the threat to crowd out civil litigation and that we won't be able to handle civil cases which, after all, are of tremendous importance to litigants, as promptly as we should. To some extent, we are already seeing this.

In 1984, an average Federal district judge tried 28 civil cases in a year, and in 1989, that number was down to 22. The reason is not, I ask you to believe, that they are not working as hard; the reason is that more and more of their time is taken up by criminal cases.

On the appellate level, 50 percent of the criminal appeals that we are getting now are drug cases. I can just give you one anecdotal reference from my own experience. Our term of court on the eighth circuit began in September 1989. For the first 3 months that we sat, we did almost nothing but hear criminal appeals, because notices of appeal had piled up over the summer, and we give priority to those cases on our docket.

PREPARED STATEMENTS

So that is the situation that we are facing. We believe that we can handle it, but we need the help of the Congress to do so.

Mr. Chairman, we are pleased to answer your questions.

[The statements follow:]

Statement of Richard S. Arnold

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to appear here, once again, to present the budget and plead the cause of the U.S. Courts of Appeals, District Courts, and related judicial services for fiscal year 1991.

Mr. Chairman, I am accompanied today by Judge William G. Young of the United States District Court for the District of Massachusetts, a member of the Budget Committee of the Judicial Conference. Members of the Administrative Office are also present.

It seems a very short time since I last came before you to discuss the needs of the Federal judicial system. Those needs have been handled with great care and understanding by you and your committee, especially when one considers the budgetary limits within which all of us in Government have had to operate. Congress often must make funding decisions with respect to the judiciary, without the general support or understanding of the public. Mr. Chairman, we know how difficult your job is. The entire Federal judiciary very much appreciates the support you have given us.

This subcommittee in the past has noted that the judiciary doesn't have a strong natural constituency. You have urged us to work closely with the Budget and Judiciary Committees regarding the budget resolution in order to provide the flexibility needed for this subcommittee to fund the judiciary fully. We have taken your advice to heart, and this year there is language in the House Budget Committee report on the budget resolution that states in part: "The committee recognizes the critical role of the judiciary in the war on drugs * * *. The allocation for function 750 assumes full funding for the judiciary, and the Appropriations Committee should strongly consider full funding as well, because of the critical role of the courts. The committee supports the level of funding for the judiciary assumed in the President's budget."

As you know, the Senate Budget Committee is still considering its version of the budget resolution, and we are working to get similar language into that committee's report.

Also this year, the Senate Judiciary Committee not only supported full funding for the judiciary, but in its "Views and Estimates" letter to the Budget Committee, it recommended an additional $50 million for the judiciary above our request. $20 million of that increase is to help the judiciary handle the drug workload, and $30 million is to implement a comprehensive civil justice reform package.

We come before you with a budget, that, to the best of our ability, is tailored to the difficult funding problems of today. We are asking for $1,935,280,000 for the courts of appeals, district courts, and related judicial services, an increase of $361,706,000 over fiscal year 1990. Apart from the fiscal year 1991 cost-of-living increase which is normally a supplemental item, our request is slightly less than 20 percent over fiscal year 1990 enacted. Moreover, that 20 percent includes the pay increase for judges scheduled to go into effect at the beginning of calendar year 1991. You will recall that we came in with a similarly reduced request in fiscal year 1990, which was also for an increase of about 20 percent. Our request is a significant reduction from higher estimates of increased needs given to us by the different elements of the judiciary. Judicial Conference Committee chairmen have worked well with our Budget Committee to arrive at a minimum figure—one below which we believe substantial harm would be done to court operations. We achieve these reductions, in large part, by deferring expenditures for up to a year or longer. This is particularly true in the case of staffing for increased workload. Rather than bring the needed staff on board during the course of the year as the workload materializes, they are brought on board toward the end of the year. Similarly, purchases of furniture and equipment and other controllable items are often deferred repeatedly, over a period of years.

Although our requested increases are significant, the judiciary is not a Cadillac operation. Far from it. The ever-increasing workload of the courts more than absorbs any increases in resources. In fact, I believe we are in a constant state of understaffing and underfunding. But we are striving to get the job done, to make the American system of justice available to everyone, everywhere in the country.

THE AUTOMATION PROGRAM

With last year's funding for automation, the Congress greatly assisted the judiciary in making a strong commitment to the pursuit of the best possible automated resources, thereby improving the effectiveness of the Federal court system. Great strides are being made in accomplishing the objectives of the "Long Range Plan for Automation in the U.S. Courts," as outlined on page 5.85 of the budget justification. The ability of the judiciary to meet these objectives continues to depend on the availability of a long-term stable source of funding. In this respect, we are requesting an increase of $16,733,000 for fiscal year 1991.

In addition, the Judiciary Automation Fund, which Congress approved last year, is helping to provide the stability and flexibility in funding necessary to make the automation program a success. The fund will allow the judiciary to meet the basic automation needs of the courts which have already been identified. Because it operates without fiscal year limitation, it facilitates long-range planning, procurement, and implementation of systems to replace those that have become obsolete and too expensive to maintain. In this way, the judiciary keeps abreast of advances in technology, which continue to appear at a remarkable rate.

An area of major importance in the future is providing automated public access to the vast amount of case information which is contained in the courts' automated systems. This information is of great interest and value to the bar, litigants, government officials, commercial enterprises, and the general public. If an automated system of access to this information can be devised, we can better serve the public and free staff people from having to respond personally to inquiries. In addition, the judiciary is requesting authority to establish reasonable fees for this public access with the proceeds to be deposited into the Judiciary Automation Fund, to defray the cost of providing this service to the public.

SPECIAL MASTERS—FIRST YEAR OF OPERATIONS

Over the past year (November 15, 1988 through November 15, 1989), the Office of Special Masters, United States Claims Court, has received 193 vaccine injury filings. Of these 193 cases, 76 have been disposed of. All of the 193 filings save two were retroactive claims, and as of November 15, 1989, the office had 117 pending cases.

The projected workload for the Office of the Special Masters is unclear, as it has been since the beginning of this program. The program was amended by the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, to give the special masters authority to make final decisions subject to limited review by judges of the Claims Court. The amendments also made clear that the government may submit evidence in pending cases in which the government has not yet participated. This will cause a reopening of the evidentiary record in approximately 50 cases. Finally, petitioners' counsel and government representatives estimate that 500 filings in a fiscal year is a reasonable figure. The last day for filing a claim for compensation due to a pre-October 1, 1988, inoculation is November 15, 1990.

With regard to post-October 1, 1988, inoculations, less than 10 cases have been filed to date. We are still estimating this part of the caseload at 150 to 220 awardable cases per year, with actual case filings at some relatively higher level.

The cost of the program during its first year, which entailed establishing the operation, was $1,052,000. Estimated costs for fiscal years 1990 and 1991 are $1.5 million each year.

DRUGS

For 1991, we are estimating that 35 percent of criminal cases filed in District Courts, involving 37,500 defendants, will be drug prosecutions. This is up from 26 percent in 1989 and 32 percent in 1990. During the 1980's, drug cases increased by 229 percent. The rapid increase in drug prosecutions will overwhelm the Federal courts unless sufficient resources are provided. Currently, resources are being diverted from civil to criminal cases because speedy trial laws mandate that criminal cases take priority, and courts of appeals also make a practice of expediting criminal appeals on their dockets, thus threatening to increase greatly the time it takes to decide civil appeals.

The judiciary estimates that drug-related costs will total $403 million in 1991, an increase of $79 million over the 1990 level. This is a function of anticipated increases in prosecutions. The number of assistant U.S. attorney positions increased by 471 in 1989, and will increase by another 800 in 1990. Additional DEA agents are also being hired. This, of course, means additional workload for the courts, particularly in 1991, when all the new assistant U.S. attorneys will have been hired and trained. Included in our request is an increase of $9.25 million to fund the Substance Abuse Treatment Program at $28.75 million in 1991. With nearly 18,000 Federal offenders in substance abuse treatment, the program is the largest such criminal justice program in the country.

ADVANCE APPROVAL FOR ADDITIONAL MAGISTRATE POSITIONS

Our budget submission this year contains a request for $2,370,000 for six undesignated new magistrate positions and supporting personnel, in addition to 16 new magistrate positions for which workload surveys have been completed and locations approved. Magistrates are the first judicial officers to feel the impact of drug prosecutions. They may also afford the most immediate judicial relief for the drug emergency in the Federal courts. The six positions sought will be allocated to those district courts experiencing the largest influx of workload, a significant element of which is drugs. Those locations will be determined at the June 1990 Magistrates Committee meeting at which time Congress will be informed of the reasons supporting the choice of locations.

BUDGET DECENTRALIZATION PROGRAM

The budget decentralization project will complete the third year of the pilot program in September 1990. The five courts participating in the pilot are: Arizona, California (N), Washington (W), New York (S), and the Second Circuit Court of Appeals. An evaluation of the pilot program, being prepared by the National Academy of Public Administration, will be submitted to the Judicial Conference in March 1991, and a decision will then be made with regard to nationwide expansion of budget decentralization. If approved, expansion would not begin before fiscal year 1992 at the earliest and would take place over at least a two year period.

Budget decentralization encompasses virtually all of the operating expenses of the courts involved, with the exception of judges' and magistrates' salaries and travel expenses and those of their staffs. Each unit within the court (clerk's office, probation office, pretrial services office) prepares an operating budget for each object classification of expense for the forthcoming fiscal year. These budgets are reviewed by the appropriate divisions within the Administrative Office (AO), and budget allocations are provided to the various court units. The pilot project rests on the premise that, given a known funding level and the flexibility to reallocate funds as needed within that level, local managers can effectively support local needs through use of planned savings without needing to request additional funding from the AO.

The ability to prioritize, plan, and reallocate available funds locally provides incentives for the pilot courts to look for cost savings and operational efficiencies. And when resources are tight, local management allows courts to manage the scarcity and use remaining funds according to their own greatest needs. Pilot courts seem happy with this program, and they are showing an ability to respond to emergency needs through the reprogramming of their resources.

FISCAL YEAR 1990 SUPPLEMENTALS

The judiciary is proposing a pay cost supplemental for Article III judges of $5,253,000 and a program supplemental of $22,750,000 to restore anticipated funds that have not materialized because fee collections have not come up to our previous estimates. We had estimated collections of fees for handling registry funds, bankruptcy filing fees, and fees on motions at levels higher than now obtainable. Specifically, fees for handling registry funds were estimated at $21 million, and are now estimated at $6 million as the result of reducing the maximum fee from three percent to approximately one percent. The reduction was the result of strong opposition to the three percent fee in the courts and among members of the bar. Bankruptcy filing and motion fee collections were originally estimated at $33 million. Collection of these fees, however, could not, by law, begin until at least 30 days after our current appropriation was signed. Current projections are approximately $25 million, a shortfall of $8 million. In order to guard against the possibility that our supplemental requests will be delayed or will not be granted at all, we have had to create a reserve of about $22.5 million. This reserve has been created by withholding from immediate expenditure, for the time being, the following funds: $6 million for personnel, $4.5 million for equipment and furniture, $7.8 million for automation equipment and $4 million for space renovations.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES—FISCAL YEAR 1991 REQUEST

Our budget request for fiscal year 1991 represents the minimum increase consistent with the growing workload of the courts. For the courts of appeals, district courts, and other judicial services, we are requesting $1,935,280,000 and funding for 24,746 positions, an increase of $361,706,000 and 1,849 positions over fiscal year 1990 enacted.

INCREASED CASELOAD

During the year ending September 30, 1989, filings with the courts of the United States totaled almost 1 million cases, specifically 969,725, including appeals, civil, criminal, and bankruptcy cases. On the whole, cases are becoming more complicated. Raw civil filings have dropped since 1984 from 260,000 that year to 225,700 in 1989. However, if social security and recovery of overpayment cases on student and VA loans, cases which rarely come to trial, are excluded, triable civil cases, a category more indicative of real workload, increased from 186,000 in 1984 to 201,000 in 1989. Meanwhile, criminal filings increased in the same period from 37,800 to 46,800. Appeals also grew significantly from 32,300 in 1984 to 40,000 in 1989. Since 1984, the number of Article III judgeships in the district courts and the regional courts of appeals has remained the same—731.

Dramatic statistical information bearing on the number of drug crimes is revealed in case figures for fiscal year 1989. From fiscal year 1984, when total criminal filings amounted to 37,829, and drug cases numbered 5,919, these figures rose to 46,828 criminal cases and 12,306 drug cases in fiscal year 1989. During this time the drug cases more than doubled and rose as a percent of criminal cases from 16 to 26. It should also be noted that criminal cases, as a whole, average 1.4 defendants per case while drug cases average 1.9 defendants per case. Many more drug cases are multi-defendant actions.

Cases filed before the courts of appeals rose to 39,927 in fiscal year 1989, compared to 38,345 in fiscal year 1988. Civil appeals from the district courts increased only one percent, while civil appeals from other sources (original proceedings, bankruptcy courts, and administrative agencies) declined by 2 percent in 1989, after increasing 11 percent the year before. A dramatic increase was reported, however, in criminal appeals from the district courts. These appeals rose by almost 2,000 cases to 8,399 this year, a jump of 31 percent. Much of this increase is directly attributable to the new Sentencing Guidelines.

Filings in the bankruptcy courts continued to increase to record levels in 1989. Petitions filed under the Bankruptcy Code rose to 656,980 this year, up 8.7 percent from a year ago. This continues a steady trend since 1984 and represents an increase of more than 89 percent over a five-year period.

SALARIES AND EXPENSES

The judiciary's fiscal year 1991 request for salaries and expenses amounts to $1,643,120,000, an increase of $311,893,000 over fiscal year 1990. Of this increase, $174,390,000 is for uncontrollable adjustments to the base appropriation, $13,130,000 for additional positions of bankruptcy judges and magistrates, $73,545,000 for workload increases, $18,833,000 for improvements in services, and $3,992,000 for the Violent Crime and Drug Initiative.

Salaries of judges.—Under the adjustments to base, we have included $1,370,000 for a reduction in the vacancy rate of active judges from a projected average rate of 36 vacant judgeships in fiscal year 1990 to 23 in fiscal year 1991. In addition, $4,600,000 is an adjustment to base to support an estimated increase of 7 senior retired judges and 2 senior resigned judges in fiscal year 1991.

Relative to program increases for salaries of judges, Mr. Chairman, we are not asking for any additional bankruptcy judges at this time. However, due to increases in bankruptcy workload, we plan to recall five additional judges to assist regular judges in 1991, which with staff will cost $2,060,000.

In the case of magistrates, we are requesting 16 whose locations have already been approved by the Judicial Conference. In addition, as mentioned above, we are requesting six accelerated magistrate positions for six months, which equal, for cost purposes, three full-time equivalent positions.

The 16 new magistrates will be located in the numbers and at the locations as follows: two in Brooklyn; two in Los Angeles; two in Miami; and one each at the following locations: New York City; Buffalo; Knoxville; Little Rock; Flagstaff; Watertown; New York; Christiansted, the Virgin Islands; Galveston; Memphis; and Mobile. We note in addition that a new magistrate was sworn in at Des Moines on January 16.

Salaries of supporting personnel.—Also included in this appropriation is the activity "Salaries of Supporting Personnel," in which we seek funds to pay clerks, deputies, probation and pretrial officers, and other support staff. Our request includes the funds necessary to pay 1,827 additional support employees for the courts of appeals, the district courts, and the bankruptcy court.

DEPUTY CLERKS

We have requested significant increases in the number of deputy clerks. Most of these are in the bankruptcy clerks' offices. With the continuing enormous increase in bankruptcy filings, we have no choice but to request your help in this area, if we are to deal effectively with the demands of both business and the consumer. With 118,000 more cases projected for fiscal year 1990 than in 1989, and every reason to believe we will have similar growth in 1991, we would be remiss not to request the extra help necessary to see that these petitions are accorded complete judicial consideration and processing. Of the 871 deputy clerk positions we are requesting, Mr. Chairman, 487 are for the bankruptcy courts.

Workload estimates indicate that we will also need 34 deputy clerks for the courts of appeals and 31 more for the district courts.

In addition to the above, we are requesting 240 clerk positions to support the automation program in the courts, including hardware and software support for the large number of PC's in the courts. Forty positions are requested to operate a fine collection center to meet the requirement of Public Law 100-185 that the judiciary collect felony fines. Part of the cost of the center, $2.2 million of the projected $3.1

million for fiscal year 1991, will come from fine collections deposited with the Victims of Crime Fund in excess of $125 million. Six additional court interpreter positions are required to reduce increasing costs of contract interpreters, especially as the need continues to rise. Finally, 33 new positions will be required in fiscal year 1991 to handle drug cases resulting from additional U.S. Attorneys brought on board by the Department of Justice in 1989 and 1990.

PROBATION SERVICES

The three major indices of the probation workload are: (1) number of persons received for supervision during the course of a year; (2) the number of persons under supervision, and (3) the number of investigative reports prepared. All of these are Increasing, and there is no foreseeable decline at hand. As I said earlier in this statement, drug-related crimes are increasing at a faster rate than any other category of violations. As a matter of prudent judgment, we can only expect these increases to continue, and thus we must ask for additional positions for the probation service.

We are requesting a total of 718 additional positions, of which 255 are for workload measured by the existing work measurement formula. Of this number, 5 positions are for pretrial services operations in probation offices. Another 11 of these positions are for pretrial services operations conducted in independent pretrial offices.

Home confinement as a condition of supervision is growing dramatically as a less expensive alternative to imprisonment. Eighty-seven more positions are required in 1991 for this purpose. Funding is also requested for an additional 116 probation positions to handle increased workload resulting from the Sentencing Guidelines. This brings to 596 the number of staff required for this purpose in fiscal year 1991 because of the increased complexity involved In preparing presentence reports. Finally, an additional 260 positions are required to handle the increased workload anticipated from drug cases produced by the additional Assistant U.S. Attorneys mentioned above.

NATIONAL COURT LIBRARY SYSTEM

We are requesting 28 positions to continue the development of the National Court Library System, which now consists of 78 libraries staffed with 236 positions. Each circuit's library program is managed by its Court of Appeals and provides on-line information services to all judges, magistrates, and other court personnel. The libraries also provide computer assisted legal research (CALR) to 287 CALR terminals in 237 cities. The additional positions will help the library system meet the ever-increasing demands of judges, magistrates, and court personnel, though staffing will still not be sufficient to obtain maximum benefit from the system. More people are needed to make the library system completely cost effective and to give the courts the support they could effectively use.

ELECTRONIC COURT RECORDING PROGRAM

The electronic recording program has expanded more quickly among district judges than originally anticipated. Sixty-one active and 33 senior district judges are now using this equipment to record their proceedings. Many judges find the system a very efficient means of recording court proceedings and preparing transcripts. While our requirements for this technology are growing at a measured pace among judges, we have a new and urgent need for the same technology for magistrates. Because the proceedings before magistrates are becoming rapidly more complex and because of new requirements for transcripts of pre-detention hearings, the total number of transcripts needed for appellate review has increased significantly. We are requesting 50 additional electronic court recorder operator positions for 1991 to cover magistrate proceedings. These positions represent a savings of $900,000 below what the same number of traditional court reporters would cost.

SPACE AND FACILITIES

The budget estimate for the activity "Space and Facilities" includes an increase of $9,875,000, for a total of $19,735,000, to fund necessary alteration projects in fiscal year 1991. However, we also require $10 million to fund alteration projects which are being deferred in fiscal year 1990 for lack of sufficient funds. GSA is requiring the judiciary to pay for items normally funded by GSA, such as judges' benches, witness boxes, jury boxes, and chair rails which separate public seating from the judge's bench. For these and other similar items, GSA will require a payment of

$13,800,000 in fiscal year 1991 over the $8 million available in the base appropriation. A request for $125,000 is included for contractual services to analyze each judicial district facilities plan, complete plans where courts have not done so, and incorporate the resulting data in Administrative Office data bases and housing plans.

CONTRACTUAL FUNDING FOR PROBATION AND PRETRIAL SERVICES PROGRAMS

We are requesting an additional $9,250,000 over the $19,500,000 in the base appropriation for the drug dependent offender program. The demand for the program is growing much faster than the probation service can handle. We expect that the increase in persons receiving drug and alcohol treatment in fiscal year 1991 will be twice as much as the increase in fiscal year 1990.

The Mental Health Treatment program is new in fiscal year 1990. We are requesting an additional $1,125,000 to expand such services, which are provided by community agencies. The base appropriation for mental-health treatment for persons supervised by probation officers in fiscal year 1991 is $375,000. The $4,250,000 request for contractual support for pretrial services saves jail costs, because such services include residential halfway houses, addict and alcoholic treatment centers, and counseling. Such services also reduce jail usage because the judges find it a very desirable way of keeping people out of prison. These services cost money in the budget for the judiciary, but costs for the U.S. Marshals Service and the Bureau of Prisons are reduced.

The $1,195,000 requested for contractual support for student pretrial services is in addition to the $405,000 currently in the base appropriation. Law and criminal justice students perform limited pretrial services functions such as preparing reports and attending court hearings. The $3,650,000 for contractual support for electronic monitoring is a new program, staffing for which was mentioned above. Home confinement augmented by electronic monitoring will probably permit 1,000 persons to benefit from home detention rather than being in prison in fiscal year 1991. The monitoring device costs about $10 per person per day, which, together with the cost of the probation staff necessary to monitor the program, still represents a saving of 50 percent of the cost of imprisonment.

CHILD CARE CENTERS

Currently, $375,000 is available in the base appropriation which, when added to our additional request of $1,125,000, will support the establishment of 50 additional day care centers. Appropriated funds are not used for professional services in these centers, but they can be used for equipment, supplies, furniture, utilities and overhead. Employees who use these centers pay for the professional services needed.

PAYMENTS FOR COURT APPOINTED COUNSEL TO PROSECUTE CONTEMPT CASES

The majority of contempt proceedings are handled by Department of Justice attorneys. However, for those cases when U.S. attorneys are unavailable because of conflict of interest or otherwise, we are requesting $75,000.

EXPANSION OF AUTOMATED SYSTEMS

The fiscal year 1991 portion of the courts' Long Range Automation Plan provides for an increase of $14,478,000 for the purchase of equipment and services. A large part of the increased cost is dedicated to the District Court Automation Project, which includes buying new computer systems, upgrading existing systems, and purchasing and installing data communications equipment. Significant increases in expenditures are also called for the Bankruptcy Courts Automation Project, the new probation information system, called Probation Automation Case Tracking System (PACTS), and electronic mail for circuit courts. An additional $1,755,000 will fund 48 more reimbursable positions for the support of automation in the courts. This number will bring the total of reimbursable positions to 212. Finally, 35 positions and $500,000 are requested to augment the staff located at the ADP training centers in Phoenix and San Antonio.

CONTRACTUAL FINANCIAL AUDITS

The sum of $250,000 is in the base appropriation for the purpose of contracting with auditors from a CPA firm. The request for the additional $300,000 will permit the judiciary to conduct audits on a two-year cycle, by alternating audits between the Administrative Office Audit Branch and the contract auditors. Currently, the audit cycle for the courts is a little over four years.

OPERATIONAL TRAINING

The sum of $600,000 is requested for the purpose of training court personnel in the area of contracting and contract monitoring, procurement, voucher examination, accounting, and operating word processors and personal computers. Two hundred thousand dollars is in the base appropriation for this purpose.

DEFENDER SERVICES

Our request for funding of the Defender Services program comes to $167,580,000 for fiscal year 1991. These funds will be used to meet the demand for counsel and investigative, expert, and other services by indigent criminal defendants, and to continue support of death penalty resource centers. The defender caseload continues to rise right along with the increase in general criminal violations, drug-related crime, and the rising need for the services of experienced counsel in habeas corpus death-penalty cases. Counsel must be provided for defendants, or charges might have to be dropped because of the lack of counsel. The criminal statistics cited earlier in this statement show that no reduction in this program is possible.

FEES OF JURORS AND COMMISSIONERS

We are requesting $57,997,000 for fiscal year 1991, which will represent no increase in budget authority over 1990. As you have heard me say before, a failure to provide this funding might necessitate a recommendation for the suspension of jury trials in civil cases, in order to provide funds for criminal trials and grand juries. Such a suspension would certainly produce more litigation, such as that which occurred when the Eighth Circuit enjoined the Director of the Administrative Office and the Ninth Circuit declared the suspension of civil trials unconstitutional after they were briefly suspended in 1986.

COURT SECURITY

We are requesting $66,583,000 to fund additional court security officers (CSO's) approved in fiscal year 1990. The increasing number of drug cases and other sensitive trials, such as those involving international terrorism, has created an atmosphere of tension and sometimes real danger in courtrooms.

CSO's employed by the Marshals Service have been an effective force in the maintenance of the secure and deliberative climate that is essential to a court of law. Thousands of weapons have been seized, and some arrests have been made of persons attempting to enter courthouses or courtrooms while carrying arms. The CSO's are a bulwark against the outrages that have been regularly committed in some Third World nations, and which threaten the entire structure of a government of law. The primary mission of the Judicial Facility Security Program, the CSO's, and the security systems and equipment, is to protect the perimeter of court facilities and prevent the unlawful introduction of weapons, explosives, and other dangerous devices into judicial areas.

COURT SECURITY FISCAL YEAR 1991 AMENDMENT

We are requesting an additional $6,279,000 in the fiscal year 1991 Court Security appropriation to provide resources for an additional 279 Court Security Officers (CSO's). These additional CSO's are needed to enhance security and to replace other CSO's at perimeter posts who are called on to provide full screening of all mail sent to employees at judicial facilities. Therefore, the amendment brings the total Court Security appropriation request to $72,862,000, which will fund a total of 1,907 CSO's.

The recent murder of Judge Robert S. Vance of the Eleventh Circuit Court of Appeals and the increasing volume of drug-related cases support the need for a strong security presence in and around the courts to ensure the safety of those people responsible for administering the judicial process.

CONCLUSION

Mr. Chairman and members of the subcommittee, I would like to say again that we are deeply grateful for the efforts you all have made and that the Congress as a whole has made to keep the Federal judiciary in a position to do its job. Our request, even after we have pared it down, remains large, but it is made necessary by our ever growing and uncontrollable caseload. Good faith on our part demands that we spell out the requirements to the Congress.

On behalf of the Budget Committee of the Judicial Conference, we thank you and your committee for your attention to our needs and for the many considerations with which you have favored us in the past. We are prepared to respond to questions and to any requests for additional information.

COMPARATIVE WORKLOAD DATA—FISCAL YEARS 1984 AND 1989

	Fiscal year—		Percent change
	1984	1989	
Courts of Appeals:			
Filings	32,342	39,927	23.5
Terminations	31,018	37,652	21.4
Pending	23,818	30,674	28.8
District courts:			
Civil cases:			
Filed	259,956	225,685	[1] −13.2
Terminated	251,486	229,943	−8.6
Pending	251,505	242,746	−3.5
Criminal cases:			
Filed	37,829	46,828	23.8
Terminated	36,262	42,933	18.4
Pending	20,882	32,671	56.5
Total:			
Filed	297,785	272,513	−8.5
Terminated	287,748	272,876	−5.2
Pending	272,387	275,417	1.1
Bankruptcy petitions:			
Filed	346,500	656,980	89.6
Terminated	304,774	588,663	93.1
Pending	591,778	892,670	50.8
Magistrates:			
Criminal trial jurisdiction	[2] 84,475	[2] 89,051	5.4
Civil trial jurisdiction	3,546	5,354	51.0
Preliminary felony proceedings	109,337	155,048	41.8
Other criminal and civil matters	180,898	169,258	−6.4
Probation:			
Received for supervision	[2] 42,456	[2] 46,352	9.2
Under supervision, year-end	63,092	77,216	22.4
Pre/post sentence investigations	32,092	39,645	23.5
Other:			
Petitions for naturalization	[2] 218,616	[2] 285,424	30.6
Aliens naturalized	171,750	236,471	37.7

[1] Includes social security and recovery of overpayment cases on student and VA loans, cases which rarely come to trial and which, if excluded, result in triable civil cases increasing from 186,000 in 1984 to 201,000 in 1989.

[2] Data for the year ended June 30.

STATEMENT OF L. RALPH MECHAM

Thank you for the opportunity to appear before the subcommittee and present the 1991 budget request of the Administrative Office of the U.S. Courts. Accompanying me at this hearing is Mr. Raymond A. Karam, Assistant Director for Administration, and other members of my senior staff

Before getting into the substance of the 1991 request, I would like to thank all the members of the subcommittee for your help and support on our 1990 appropriation. As you know, last year the Administrative Office was stretched to the breaking point to provide essential services to the judiciary. The willingness of the subcommittee to recognize this and to work with us to provide sufficient funds in 1990 was critical not only to the Administrative Office, but to the whole judiciary. Your efforts are greatly appreciated. In particular, thank you for the 87 additional positions and funding that were included in the Administrative Office appropriation.

While the additional positions have helped ease the immediate crisis so that we can accomplish our core functions, we still have many challenges to face in meeting present and future needs. Because workload continues to grow, the judiciary needs increased funding in 1991 to serve the public well. Judge Arnold is testifying as to the needs of the courts in 1991. As you know, the Administrative Office is called upon to provide more services as the judiciary grows. In the personnel office alone, we now handle 35,000 pieces of mail coming in each month. This is an enormous workload for a small staff to process.

When the Administrative Office was created in 1939, the bulk of its work consisted of delivering basic administrative services to the Federal courts in the areas of procurement, facilities management, payroll, accounting, budget, statistics collection, and personnel. Today, in addition to those services, we provide complex legal, program, and automation support. The additional services now provided include: staff support and legal counsel to the Judicial Conference; coordination among the judiciary, Congress, and the executive branch; management support and administrative services for the Federal Judicial Center and the U.S. Sentencing Commission; advice and assistance on equal employment opportunity; delivery and management of automation services; management assistance and program direction for the bankruptcy courts, clerks' offices, court reporting and interpreting services, libraries, defender services, magistrates, probation, and pretrial services; and planning and evaluating judiciary operations.

Increases in the courts' workload and staff have resulted in increased demands on the Administrative Office. Total Federal caseload for the 10-year period of 1979–89 increased by 121 percent, including a 48-percent increase in district court filings, a 97-percent increase in filings in the courts of appeals, and a 184-percent increase in bankruptcy filings. This requires not only more administrative support for additional court personnel, but creates work for our program divisions. As examples, we have provided legal assistance required to implement sentencing guidelines, and we have been substantially involved in the congressionally mandated drug testing pilot project and in home confinement pilot projects. Our probation division now supports over 4,500 positions in the courts, and with a growing number of defendants entitled to services under the Criminal Justice Act, our defender services division now oversees 43 Federal defender offices and 15 death penalty resource centers. Other activities for the Administrative Office have developed in the areas of support for the court automation effort, new Judicial Conference requirements, including extensive staff assistance to the committees, and new legislation.

However, as I brought to your attention last year, the size of the Administrative Office staff declined steadily relative to the growth of the judiciary during the 1980's. For example, the Administrative Office staff represented about 3.4 percent of the total judiciary staff in 1981. This is projected to drop to 2.3 percent of the total in 1991, a 32-percent decrease. The ratio of court employees serviced by Administrative Office employees is projected to be 43:1 in 1991, up from 29:1 in 1981, an increase of 48 percent (See Exhibit A). These figures do not include the reimbursable positions in the Administrative Office, which are dedicated to the task of automating the courts. Since 1988, the number of nonreimbursable positions in the Administrative Office has not increased at all, while the judiciary has experienced some increase in positions each year during that same period (See Exhibit B).

The rate of increase in budget authority for the judiciary has also outpaced the Administrative Office. In 1981, the Administrative Office accounted for 2.6 percent of the judiciary's funding. By 1991, this is projected to be 1.9 percent, a decrease of 27 percent. Between 1988 and 1990, the judiciary's budget authority experienced a steady rate of increase, compared to a smaller, more sporadic growth rate for the Administrative Office (See Exhibit C).

In spite of this, I am more hopeful this year than last for two reasons. First, you showed your willingness to help us by providing additional resources needed to do the job. Second, although we are faced with increasing demands on our capabilities, I have several initiatives planned and underway to develop new management strategies designed to focus on our priorities and increase our productivity. Where last year our state of health was in critical condition, this year, our health has improved to serious condition. I am sensitive to the problems the subcommittee faces in trying to reach deficit targets, and I am determined to direct our existing staff resources to critical, high priority needs. As a result, the Administrative Office is not requesting any additional direct positions in 1991. However, because of urgent need, the Judicial Conference has authorized us to request 51 new reimbursable positions to support court automation and criminal fine collection activities. These would be paid for out of the courts' salaries and expenses account. We are also requesting authority to create an additional executive level position and 10 supergrade positions within the Administrative Office, which I will describe in more detail later in my testimony.

BUDGET REQUEST

Let me briefly describe our 1991 requirements. Our request totals $38,487,000, an increase of $4,817,000 over 1990. The increase is needed to pay for current staff and to enable us to operate critical programs.

The Administrative Office attributes about $2.9 million of its total 1991 needs to activities related to the war on drugs. In 1991, drug-related cases are expected to make up 35 percent of all criminal cases filed within the U.S. Courts, a 66-percent increase over 1989. This will result in an increase of $78.7 million in drug-related resources expended by the judiciary, as drug-related costs rise from $324 million in 1990 to $403 million in 1991.

The additional drug-related caseload in the courts increases the drug-related workload in the Administrative Office. As an example, our probation division now supports over 1,626 staff-years of drug-related probation and pretrial work in the courts, and the increase in substance abusers demands the provision of additional testing and treatment services. The division currently manages a congressionally mandated drug testing demonstration project in eight districts and a drug abuse treatment program for an estimated 19,700 people on probation and 31,200 new defendants designated by the court or probation officers to receive such services.

Other drug-related workload increases are a result of increased support for additional court personnel, such as processing travel vouchers and personnel actions and managing space requirements. We have also been devoting more effort to tracking and reporting drug-related activities, both for our own planning purposes and in response to legislative and executive branch inquiries.

Our $4.8 million increase for 1991, of which all but $1 million is uncontrollable expense, is composed of the following elements: (1) $1.3 million to support annualized pay costs for the positions approved in 1990; (2) $2.4 million for pay raises and benefits for the remaining positions, and higher costs of rent, travel, contracts, training, supplies, and equipment; and (3) $1 million for improving services provided to courts throughout the United States. This $1 million represents a channeling of funds into areas that could yield a high payoff in terms of better management and increased effectiveness.

It includes $243,000 for increased travel to (1) change the audit cycle of the courts from a 4 year to a 2 year cycle; (2) train field office personnel how to use automated financial systems; (3) conduct design reviews and progress checks on GSA contract architectural engineers during the design phase of alteration projects; (4) conduct court visits and management reviews; (5) evaluate the electronic sound recording system being used by 204 judges; (6) institute improvements in case management and jury utilization; and (7) review how well courts are complying with Judicial Conference policies and procedures.

Of the increase $582,000 would allow us to contract out for (1) new programming requirements for our existing automated system; (2) a cost analysis study of printing and distribution functions; (3) computer operational time and equipment; (4) an assessment of employee training requirements; (5) an actuarial model for the judicial survivors annuity fund; (6) work on a court clerks' manual; and (7) a study on video equipment in courts.

Of the increase $95,000 is for training staff in the courts in procurement and ADP; $80,000 is needed for ADP supplies, software, and equipment replacement.

We are also requesting authority to pay senior staff salaries up to the new 1991 Executive Level V salary level. In order to do more with less, the Administrative Office must be able to attract and retain managers capable of handling complex and extensive areas of responsibility that have a major, direct effect on the courts.

There currently are 17 so-called supergrades in the Administrative Office, each of whose salary is capped at the current Level V pay. However, Executive Level pay will rise 25 percent in January 1991. Senior Executive Service (SES) pay in the executive branch is expected to rise commensurately. Because the Administrative Office is not covered by the SES program, we need independent authority to adjust the salaries of our supergrades to salaries equivalent to those of their executive branch counterparts and in line with their executive staff responsibilities. This authority will cost $263,000 for 9 months in fiscal year 1991. The Administrative Office will absorb the cost of this salary adjustment for the 10 additional supergrade positions being requested for 1991.

Altogether, with program increases, our total request for fiscal year 1991 is 14.3 percent higher than fiscal year 1990.

MANAGEMENT INITIATIVES

In my continuing effort to improve management within the Administrative Office, I have asked my staff to focus on long-range goals as well as short-term objectives. My primary goals continue to be: (1) operating at peak efficiency at the least possible cost; (2) improving service performance and delivery; (3) modernizing both Administrative Office and court management systems and planning capabilities (including the installation of modern automated systems); (4) improving communication with judicial officers and staff; (5) decentralizing operating functions when appropriate; and (6) eliminating internal and external impediments to effective Administrative Office and court management. I have been very pleased with how well these goals have been incorporated into management plans during this past year.

Also, the Administrative Office has expanded our capacity to prepare judicial impact statements on a regular basis to assess the resource impact of important legislative and executive branch proposals on the judiciary. These impacts can then be incorporated into our planning process.

We have tried to use the additional positions provided in 1990 to concentrate on management initiatives that will maximize the efficient use of existing resources. To assist me in allocating the new 1990 positions, I conducted a random sample survey of top court management, including chief circuit, district, and bankruptcy judges, chief probation officers, clerks, and public defenders. Using their expressed needs and priorities as a guide, I directed my top management to focus on certain initiatives.

For example, greater discretion has been given to the courts to handle certain administrative and operational functions in those areas where a core administrative capability already exists in the courts. These include broader budget execution authority; on-site voucher examination for payments to panel attorneys representing indigent defendants in more than 40 courts; authority to procure items up to $25,000 without approval by the Administrative Office; and management of two buildings occupied in whole by the courts. By positioning more discretion in the hands of local managers, the administrative system can become more responsive and, I hope, more efficient.

Such delegations of authority require the development of systems and controls to assure that responsibilities are carried out properly. Oversight and audit of programs becomes more important, as do the provision of training and guidance.

At the same time that we are moving forward to automate the courts' information management, the Administrative Office has undertaken several automation projects designed to eliminate costly duplication of tasks and provide better management information to both the Administrative Office and to the courts. For example, under our old accounting system, the Administrative Office had access only to disbursement data from the courts, which was transmitted in hard copy and, except for some automated courts, was keypunched into a computer by our personnel in Washington. Under our new central accounting system (GAS), the courts enter disbursement and obligation data directly into our central system, which generates reports needed for financial management. Currently, 36 of the 90 district courts are on-line with this system, and most of the remaining courts will be brought into the system during 1990–92.

Also, we are undertaking a pilot project to give selected courts access to our automated personnel system, which will eventually allow the courts to enter personnel data directly, eliminating the need to keypunch in Washington.

Other automation projects underway consist of a system to track the dollars and dates involved in all our space and facilities projects (such as new construction and building renovations), and automation of the process of ordering law books for the courts. By eliminating duplication and taking the pressure off the Administrative Office to provide those functions that can be handled better at the local level, the Administrative Office will be able to devote more resources to providing professional support.

In the office automation arena, we provided approximately 300 personal computers to professional and secretarial staff in 1989, thus successfully standardizing throughout the Administrative Office the use of compatible word processing and electronic spreadsheet software. This standardized software can vastly increase productivity throughout the Administrative Office by permitting sharing of documents between offices. It will also allow the Administrative Office to be integrated into the judiciary's planned nationwide electronic mail network known as JURIST (the Judiciary Users Requirements for Integrated Systems Technology).

Court automation has created a new responsibility and function within the program divisions of the Administrative Office. The divisions are now helping to define the courts' needs and system requirements and working with the system programmers in the development of applications. This makes the program divisions a liaison between the court managers, who are the end users, and the Administrative Office automation people, who do the actual design and programming of the needed systems.

In addition to these automation-related activities, we will be identifying better ways of providing services, developing guidelines for the courts, and providing the support needed to help in program implementation. The Administrative Office's important responsibilities for providing staff support to the Judicial Conference committees continue to grow. We estimate that this will require at least 60 staff-years in 1990. Another important activity is ensuring that the courts are responsive to congressional concerns, especially with regard to quality of services and accountability for appropriated funds.

To enhance our planning capability further, the statistics division has been incorporated into the Office of Planning, Evaluation, and Statistics. The increasing emphasis on statistical information to develop our workload projections and assist in program planning and review convinced me that consolidation of these two efforts will improve our operational effectiveness and was a necessary and logical step.

All the initiatives I have described will allow us to do more with what we have. We will continue to help the courts expedite bankruptcy case administration, improve juror utilization, expand the use of magistrates to assist judges, improve suspension of offenders on probation, and to look for ways to help judges effectively use systems personnel to assist with their growing workload.

However, our need for additional top level managers continues to grow as the Administrative Office moves to delegate operational responsibilities to the courts, and we concentrate on policy guidance, program management, and support to the judiciary. The Federal Court Study Committee recommended additional funding for the Administrative Office as well as more top level management positions in its final report issued April 2, 1990, which stated the following: "Congress should increase funding for the Administrative Office. Increases in the Federal judicial workload, and additional statutory responsibilities, have created in turn a dramatic increase in the Administrative Office's workload and responsibilities. The funding and personnel available to the Administrative Office, however, have not kept pace with the rest of the judicial budget * * *. The Administrative Office's work is also increasing in complexity * * *. The Office thus needs more senior professionals to accomplish more work with comparatively fewer resources. In fact, Congress may wish to consider granting the Administrative Office greater flexibility in its personnel selection and salary determinations, especially at the top management levels. At present, the director of the Administrative Office has authority to appoint many fewer top management personnel than would be the case in executive agencies of similar size; and although a judicial branch agency, the Administrative Office is subject in these matters to regulations of the Office of Personnel Management." I want to bring this to your attention because it is absolutely critical for the Administrative Office to have sufficient top management to oversee our growing and increasingly complex responsibilities. As I mentioned earlier, we are requesting an additional Executive level position and 10 supergrade positions for the Administrative Office to enable us to carry out the management initiatives described. These positions are needed to provide leadership for a new judicial officers support activity, and to enhance the management of existing activities that have experienced recent growth in the size, range and complexity of their operations and responsibilities.

The judicial officers support activity would provide a central location for judicial officers and their staffs to handle administrative questions or concerns, and would provide guidance and interpretation of Administrative Office policies and procedures. It would act as a nationwide center for assistance in case management, chambers automation needs, court governance, rulemaking, and court administration. The activity would also serve as a troubleshooter and ombudsman on matters of specific concern to Article III judicial officers and their staff, who currently have no organizational focal point to coordinate assistance and information.

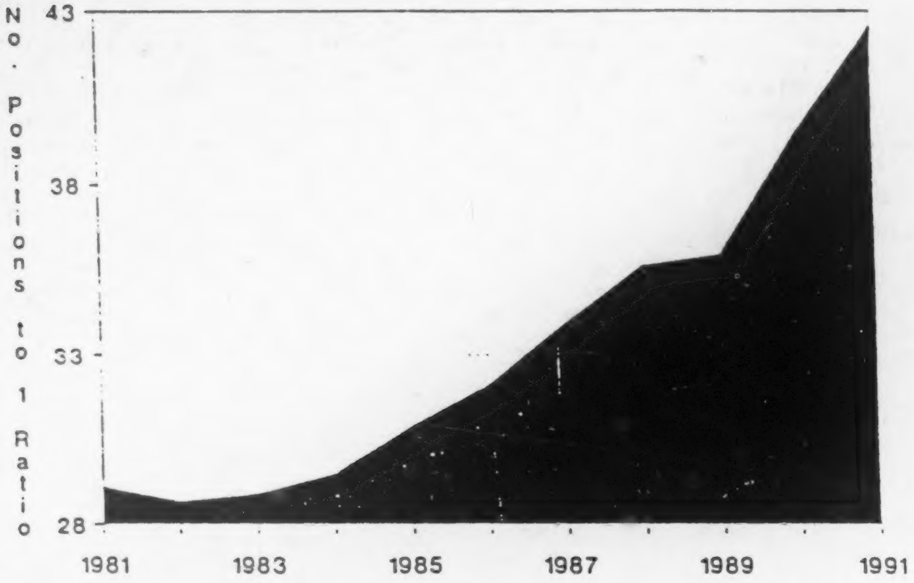
COURT AUTOMATION

Before closing, let me share with you the latest events surrounding our court automation efforts. There are now 164 reimbursable positions in the Administrative Office dedicated to developing, installing, and supporting court ADP systems. These consist of the 90 positions that were transferred to the salaries and expenses account and the 74 additional positions approved for court automation support in 1990. Many of the new positions are being filled with hard-to-find, qualified applicants that we identified during an OPM sponsored job fair last November. To manage the growing automation activities better, we have reorganized our Systems Services Division into four separate divisions under an Assistant Director.

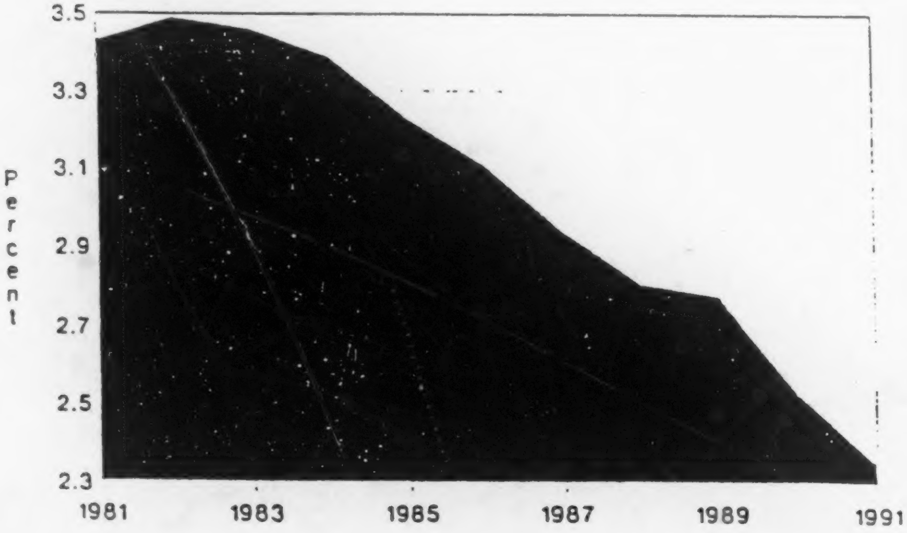
Central to the reorganization is our commitment to the integration of the judiciary's data processing, office automation, and telecommunications initiatives into the comprehensive JURIST system. JURIST will provide the judiciary with a full range of integrated automation tools such as word processing, electronic mail, access to the courts' case management data bases, and access to legal research data bases through a single PC workstation located at each court employee's desk.

As I mentioned earlier, we have requested an additional 51 reimbursable positions in 1991, in order to support the accelerated expansion of our ongoing automation initiatives. This request is detailed in the salaries and expenses budget request. As the JURIST implementation proceeds, especially with the additional resources you provided in 1990, I believe our reimbursable staff requirements will stabilize.

Thank you for giving me the opportunity to describe our resource needs as well as my plans for improving the ability of the Administrative Office to meet the needs of the judiciary. Let me emphasize, however, that we need adequate funding in order to put these improvements in place. We face many challenges in the years ahead as the judiciary grows and adapts to modern technology. I feel confident that we can meet that challenge in a manner that makes the most efficient use of the resources you make available to us.



Judiciary/AO Position Ratio

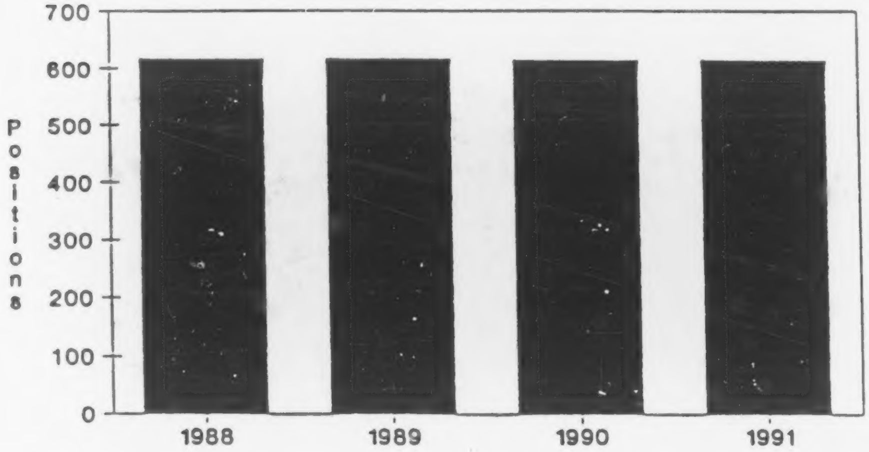


AO Positions

As a Percent of Judiciary Positions

EXHIBIT A

Full-Time Permanent Positions
The Administrative Office of the United States Courts



Comparative Rate of Increase
Positions
Administrative Office and Judiciary

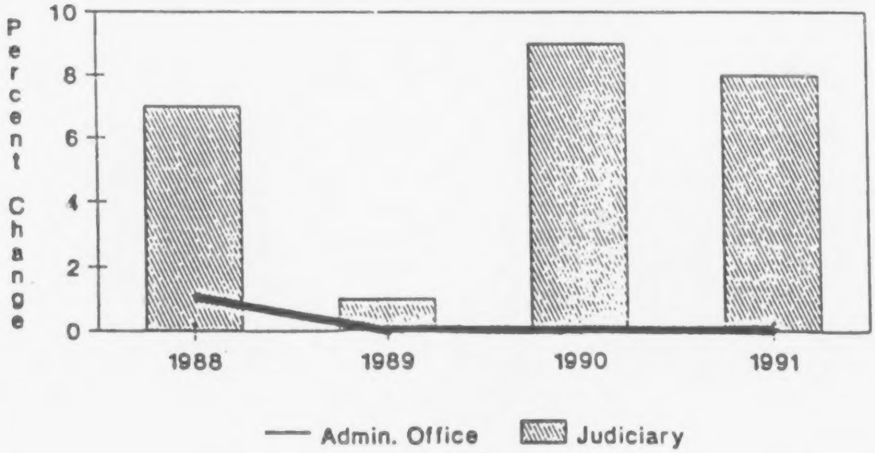
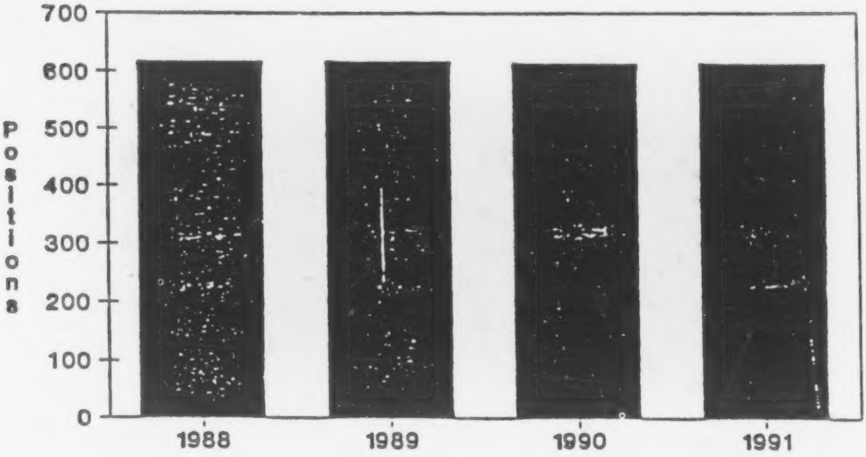


EXHIBIT B

Full-Time Permanent Positions
The Administrative Office
of the United States Courts



Comparative Rate of Increase
Positions
Administrative Office and Judiciary

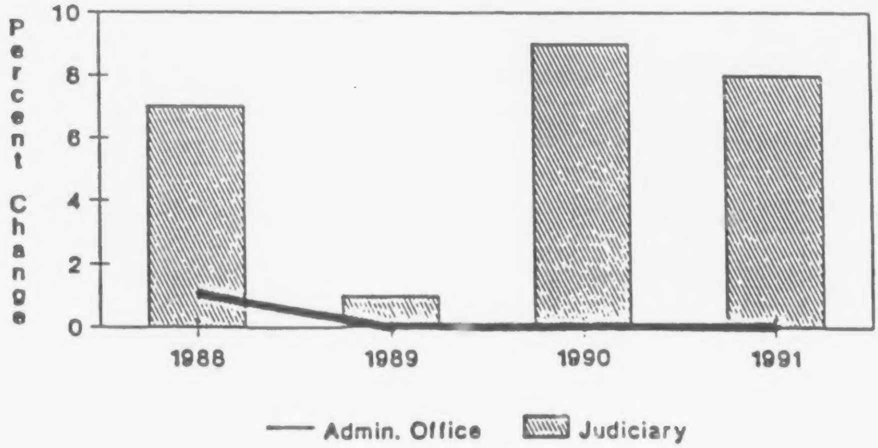


EXHIBIT C

STATEMENT OF EDWARD D. RE

Mr. Chairman, members of the committee: It is a pleasure to appear before you on behalf of the United States Court of International Trade.

The appropriation requested for fiscal year 1991 is $8,838,000, which is $566,000 more than the $8,272,000 adjusted amount appropriated for fiscal year 1990, or an increase of approximately 7 percent.

As you will notice in the court's justification of changes statement (Items 2 and 3), a total amount of $496,000 is included for pay cost increases and other adjustments in compensation and related benefits for fiscal year 1991. However, I should like to emphasize that the statement (Item 4) also indicates that seven vacant positions are to be abolished resulting in a deduction adjustment of $256,000. As a result of that deduction, the overall increase in personnel compensation and related benefits is not $496,000 but only $240,000.

We are able to realize that saving in personnel costs through the automation program established by the court, including the utilization of personal computers and electronic court recording equipment. And, if I may add, through the sound fiscal and personnel management policies that this court follows.

The sum of $186,000 is included for an increase in space rental rates imposed by the General Services Administration. This is a 5.4-percent increase over fiscal year 1990 rates. I should like to mention that the increase is $25,000 less than it would have been because the court relinquished 1,400 square feet of assigned space this year. This is in keeping with the court's policy of relinquishing space through a program of more effective space utilization.

$89,000 is requested in anticipation of replacing one of the two judges eligible for senior status, and continuing to function with assigned staff, equipment, furniture and library. $72,000 will be nonrecurring and $17,000 will be recurring.

As I mentioned, $256,000 has been deducted due to the relinquishment of seven vacant positions, of which three are JSP–14, court reporter positions. Therefore, it is anticipated that $25,000 will be required for occasional contractual court reporter and transcription services in place of the $181,000 to be saved by the abolishment of the three court reporter positions.

The balance of the requested increase, $26,000, is necessary to provide for anticipated inflationary factor increases in expenditures for services, supplies, lawbook continuations, travel, postage, printing and telecommunication costs.

I should like to emphasize, as I have in previous appearances, that the court will continue to conserve its financial resources through prudent fiscal policy.

The court's general statement and justification of changes, which provide detailed descriptions of the line item adjustments, have been submitted previously. If the Committee requires more information, we will be pleased to submit it, and, of course, I will answer any questions you may wish to ask.

STATEMENT OF HOWARD T. MARKEY

Mr. Chairman, I am pleased to present our budget to the committee for the 17th consecutive year.

Filings in the court during the last statistical year increased by 9.6 percent. Among the larger increases were those from the district courts, representing the most complex cases and thus involving the most judicial effort.

As in the past, the court has prepared a budget limited strictly to need. Increases in mandatory items, over which the court has no control, total $650,000, or 69 percent of the total requested increase. The mandatory increase includes $94,000 for full year cost of 7.9 percent judges' pay increase effective February 1, 1990. The increase for 8 months was absorbed in 1990, however the full year cost is required in fiscal year 1991; $117,000 for full year cost of 3.6 percent pay increase for judicial employees effective January 1990; $4,000 for annualization of health benefits effective January 1990; $47,000 for within-grade salary advancements; $12,000 for one additional compensable day; $240,000 for 9 months of judges' fiscal year 1991 25 percent pay increase effective January 1, 1991; $113,000 for 9 months of Federal employees pay increase of 3.5 percent effective January 1, 1991; $40,000 for travel and miscellaneous services and supplies resulting from a 4-percent inflation factor with the exception of lawbooks, for which an 8-percent increase is anticipated; and a 5-percent GSA rental increase of $143,000.

The amount of $160,000 granted in fiscal year 1990 to cover installation of AIMS has been deleted from our fiscal year 1991 base since it was a one-time appropriation.

The sum of $57,000 is requested to provide a second motions staff attorney ($42,600 for compensation, $11,400 for benefits, and $3,000 for equipment). The addition of this position is based on the increased number of motions, currently at a rate of over 2,500 a year. Our one motions attorney is doing yeoman service, but she is overwhelmed and when she must be absent the handling of motions is impeded.

The sum of $67,000 is again requested to provide one technical assistant (staff attorney) position ($50,000 for compensation, $14,000 for benefits, and $3,000 for equipment). The addition of this position is based on the growth in filings in the court's appellate patent jurisdiction. District court appeals now represent 34 percent of the pending caseload, compared with 20 percent in 1984. Moreover, only 26 percent of these cases are settled or dismissed as compared with 35 percent of other cases. Consequently, an increasing proportion of the court's judicial resources must be devoted to these complex cases, many involving state-of-the-art technology. An additional technical assistant (staff attorney) is needed for the court to keep abreast of the growing caseload in the intellectual property part of its jurisdiction.

These additions will give the court only 6 of the 12 staff attorneys the court is statutorily authorized, but, in accord with its established policy, the court is continuing to limit its requests to those for which there is a proven need.

The sum of $69,000 is once again requested to provide two library positions ($50,000 for compensation, $14,000 for benefits, and $5,000 for equipment). The addition of these two positions is based on the established judiciary-wide policy that for every six judicial officers there should be one position in the library. Between our court and the Claims Court, both housed in the National Courts Building and served by our one library, there are 35 judges. Based on this ratio, there should be six positions in the library and there are currently only three.

The U.S. Marshals Service has recommended an increase of six court security officers in the National Courts Building complex. The complex, which includes the Tayloe, Cosmos, and Dolley Madison Houses, houses the Federal Circuit, the Claims Court and the Federal Judicial Center. The sum of $93,000 is requested to cover our portion of the recommended increase in security officers.

I should be glad, Mr. Chairman, to attempt to answer any question you or the Committee may have in respect to our budget.

STATEMENT OF HON. WILLIAM W. SCHWARZER

Mr. Chairman, it is my privilege as Director of the Federal Judicial Center to present the Center's fiscal year 1991 budget request.

The Federal Judicial Center is the education, training and research arm of the Federal judiciary. Its mission is to serve the judiciary and to help improve the administration of justice. Though it is an independent entity within the judiciary, to serve its mission it must respond to the needs of the courts and the people that staff the courts—judges, magistrates, bankruptcy judges, probation officers, managers and administrators, among others.

Over the years the Center has made every effort to meet those needs as best it could with essentially no increase in its budget. As a result—as the Federal Courts Study Committee recently pointed out in its report—its staff has actually declined, absolutely and relatively. While in 1980, the Center had one staff member for every 120 judicial branch employees, it now has one staff member for every 240 employees—a 50-percent decline. As for the Center's budget, it has declined from 1.44 percent of the judiciary budget in 1980 to 0.75 percent in 1989.

This drastic decline in the available education, training and research resources for the judiciary has taken place during a time when the need for such resources sharply increased. During that time, sentencing guidelines were imposed requiring a major ongoing training effort. The criminal case load—especially drug cases—increased dramatically, along with sharp increases in the volume and complexity of civil cases. All of this creates a greater need for continuing education and management training at all levels of the judicial branch, from judges on down, if the judiciary is to cope with these heavy and growing burdens. As the Federal Courts Study Committee concluded: We are concerned that the Center no longer has the resources to allow it to make the contribution to the courts that the Congress intended.

Mindful of the necessity for continued fiscal restraint, yet remaining faithful to the obligations imposed on the Center by statute, we are requesting a fiscal 1991 budget of $15,866,000, an increase of $3,381,000 over the amount authorized for Center operations in fiscal year 1990.

Approximately one-third ($1,042,000) of the requested fiscal 1991 increase results from adjustments to the Center's appropriations base. Of that amount, $163,000 restores the amount sequestered in fiscal 1990 and $879,000 provides for inflation and uncontrollable increases in cost for items such as employee compensation, GSA rent charges and Federal Telecommunications System charges.

The remaining two-thirds ($2,339,000) of the requested increase will allow the Center to fulfill its statutory obligation to provide education and training services to most of the 1,849 new personnel requested in the judiciary's fiscal 1991 budget, to provide additional training to existing personnel, to improve our video production capabilities, and to begin to meet our Federal judiciary history responsibilities.

Specifically, $1,284,000, and five positions, are requested to provide training and support to new personnel requested by the courts in fiscal 1991. The requested resources will allow most of the new personnel to attend orientation seminars and workshops immediately after their appointment, and to participate in skills development and maintenance training workshops in subsequent years.

$234,000 is requested to provide automation training for existing court managers, and to provide executive development training for active judges and senior court administrators.

$118,000 is requested to add two research associates to our Research Division so that we may expand the dissemination of research findings and systematically analyze time study data that is now being collected.

$517,000 is requested to provide increased summer educational opportunities for Federal judicial officers, and to allow us to add three staff members to our media production unit. A portion of the requested funds will enable the media unit to convert our video production and editing systems to digital format. This conversion will allow us to produce quality educational video programs for judicial branch personnel.

Video programs allow us to reach a greater number of persons each year than would otherwise be possible, and to do so in a cost-effective manner. For example, many of our video programs are used to support training at the local court level. Ten years ago Center supported local training programs reached only a handful of those employed by the judiciary. During fiscal 1989, however, 120 local programs were presented, providing instruction to 5,141 persons. We are proud of this accomplishment.

Finally, title III of the Judicial Improvements and Access to Justice Act (Public Law 100-702) authorized the Center to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government". $186,000 is requested to allow us to undertake two modest judicial history projects.

I would be pleased to try to answer any questions you or other members of the subcommittee may have about the Center's appropriations request or any aspect of Center operations.

BIOGRAPHY OF WILLIAM W. SCHWARZER

Born: April 30, 1925.

AB cum laude, University of Southern California, 1948; LLB cum laude, Harvard Law School, 1951.

Married—Anne Halbersleben Schwarzer.

Children—Jane born 1955, Andrew born 1958.

Home Address: 375 Summit Avenue, Mill Valley, California 94941.

Office Address: 450 Golden Gate Avenue, San Francisco, CA 94102.

United States District Judge, Northern District of California, August 9, 1976-date.

McCutchen, Doyle, Brown & Enersen, San Francisco, Associate 1952-60, Partner 1960-76.

Teaching Fellow, Harvard Law School, 1951-52.

Senior Counsel, President's Commission on CIA Activities Within the United States (Rockefeller Commission) 1975.

Judicial Fellow, American College of Trial Lawyers; Member, American Law Institute (Advisory Committee on Complex Litigation); and Fellow, American Bar Foundation.

Chairman, U.S. Judicial Conference Committee on Federal-State Jurisdiction; Past Member, Ninth Circuit Education Committee, Ninth Circuit Rules Committee; Past Chairman, Ninth Circuit Committee on Jury Instructions, Principal Draftsman Ninth Circuit Manual of Model Jury Instructions; Past Chairman, Rules Committee, Northern District of California, Principal Draftsman Northern District Local Rules;

Past Judicial Representative, Council of the ABA Section on Antitrust Law; Member, ABA Section on Litigation; and Member 1987 Canadian-American Legal Exchange.

Past Trustee, World Affairs Council of Northern California; Past Member, Visiting Committee, Harvard Law School; Past Chairman, San Francisco Committee, Council on Foreign Relations; Past Chairman, Marin County Aviation Commission; and Past Chairman, Board of Trustees Marin County Day School.

Faculty Member, Federal Judicial Center, ALI/ABA Course of Study, Calif. C.E.B.; National Institute of Trial Advocacy, Attorney General's, Hastings and Harvard Trial Advocacy Programs.

Served in United States Army, Military Intelligence Service in Europe Theatre, 1942-47; Holder of Commercial Pilot license.

PUBLICATIONS

Reforming Jury Trials, Chicago Law Forum (1990);

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Toward World Law—A Reply, 37 Cal. St. Bar J. 66 (January/February 1962);

World Peace Through World Law: The Disarmament Problem, 47 ABAJ 1171 (Dec. 1961);

A Break for Farmers—A Further Word, 33 Cal. St. Bar J. 290 (May/June (1958);

Practical Problems of Organizing Closely-Held Corporations, in Advising California Business Enterprises (C.E.B. 1958);

Enforcing Federal Supremacy: Relief Against Federal-State Regulatory Conflicts, 43 Calif. L. Rev. 234 (May 1955);

Presidential Power and Aggression Abroad (with Robert R. Wood) 40 ABAJ 394 (May 1954);

Wages During Temporary Disability, 5 Standard Law Rev. 30 (Dec. 1952) in 8 Industrial Law Rev. Quarterly (England) 12 (July 1953).

BIOGRAPHY OF WILLIAM G. YOUNG

District Judge: Massachusetts, 1902 U.S. Courthouse; Boston, MA 02109

Spouse: Beverly B.; Children: Mark E., Jeffrey W., Todd R.

Born 1940; appointed in 1984 by President Reagan.

Education.—Harvard College, A.B., 1962, magna cum laude; Harvard Law School, LL.B., 1967.

Military service.—Army, Capt., 1962-64.

Private practice.—Bingham, Dana & Gould, 1968-78.

Government positions.—Special Assistant Attorney General, 1970-72; Chief Counsel to Governor, 1972-74.

Academic positions.—Lecturer in Law, Boston College Law School, 1968-present; Lecturer in Law, Harvard Law School, 1979-present; Lecturer in Law, Boston Univ. School of Law, 1979-present; Faculty member, Mass. Continuing Legal Education, Inc.

Other employment.—Law clerk to Hon. Raymond S. Wilkins, Chief Justice, Mass. Supreme Judicial Court, 1967-68.

Previous judicial positions.—Associate Justice, Superior Court, Mass., 1978-85 (Mass. Judicial Council, 1984).

Professional associations.—A.B.A. (1975-78); American Law Institute; Mass. Bar Assn. (Associate Editor, Mass. Law Quarterly, 1968-76; Committee on Administration of Justice, 1972-74; Committee to Revise the Code of Professional Responsibility, 1974; Committee on Court Reform, 1976; Chairman, Committee on Evidence, 1977-78; Council on Civil Litigation; Committee on Professionalism, 1986-87); Boston Bar Assn. (Civil Procedure Committee, 1971-78; Committee on Pre-Paid Legal Services, 1975-78; Committee on Professional Responsibility, 1976-present; Member of the Council, 1977-78).

Pro bono activities.—Visiting Committee for the Department of Military and Naval Science and Aerospace Studies, Harvard College, 1968-69; Overseers of Harvard College (Secretary, Long Range Study Committee, 1969-71; Committee to Study the Structure and Function of the Board of Overseers of Harvard College, 1975-78; Chairman, Overseers Committee on the Nomination and Selection of the Senior Governing Board, 1987); Visiting Committee of the Harvard Law School (Chairman, Subcommittee on Current Curricular Development, 1972; Chairman, Subcommittee on Clinical Education, 1973; Chairman, Subcommittee on Research and Scholarship, 1974-75; Chairman, Subcommittee on Clinical Legal Education, 1976).

Other activities.—Associated Harvard Alumni.

Honors and awards.—Award for Judicial Excellence, Mass. Academy of Trial Attorneys (1982); Judge Edward R. Finch Law Day U.S.A. Speech Award, A.B.A. (Third Place, 1982).

Publications.—"Search and Seizure in Massachusetts," 54 Mass. L. Quar. 203 (1969) (Contributor to symposium); "The Board of Overseers of Harvard College: Duties and Responsibilities," Harvard Univ. Pamphlet (Jan. 1972); Chapter on civil procedure, Ann. Surv. Mass. Law (1970-73) (co-author); "Recent Developments in Massachusetts Law," Mass. Continuing Legal Education, Inc. (1973-84) (Contributor to Symposium); "Parties," 59 Mass. L. Quar. 131 (1974); "Operation of the Adversary System—Purpose of the Law of Evidence," Flaschner Judicial Institute (1984); "Trial of the High Visibility Case," Flaschner Judicial Institute (1984); "Court Reorganization: Where Are We Now and Where Are We Going?", Flaschner Judicial Institute (1984).

Noteworthy rulings.—1987: Presided over the jury trial that convicted five former police officers and a former legislative aide of conspiring to steal and distribute entrance examinations for several Boston area police departments. The conviction followed a three month trial in which former police officers testified that they broke into government buildings, copied the examinations, and gave them to friends or sold them to other officers for $3,000 each. The defendants also admitted that after the examinations had been administered, they raised the scores of their friends and lowered the scores of black and other applicants they did not like. N.Y. Times, May 8, 1987, at 10.

DRUG CASES

Senator **Bumpers**. Thank you very much, Judge Arnold. Judge Young, would you like to comment on anything the judge has said or not said? We are delighted to hear from you.

Judge **Young**. Well, I appreciate the opportunity. I would only very briefly reinforce the effect that the drug cases are having on the actual management of our day-to-day trials.

There are eight districts in the United States where over 60 percent of their workload is criminal. Now, when you have that percentage of criminal cases in a district court, your efforts to manage your civil cases are already extremely difficult. Indeed, when you get over 50 percent criminal, the civil cases are crowded off to one side, because you have your speedy trial problems with criminal cases, even though you can try a civil case now and again. So you can't keep the civil cases moving through, which, of course, is how you get your settlements.

So the time from filing to disposition grows. Indeed, in some of those districts, especially if they sit in outlying areas and have but one judge, you pretty much do not have civil cases being tried any more because the judge is trying criminal cases altogether.

CIVIL CASES

Senator **Bumpers**. That brings me to the first question I want to ask you, Judge Arnold. What is the approximate length of time from the time a civil case is filed until it is tried today?

Judge **Arnold**. I will have to get that number for you.

Senator **Bumpers**. Do you feel reasonably certain that it is growing longer all the time?

Judge **Arnold**. Well, I can tell you this: Nine percent of the civil cases are now more than 3 years old.

Senator **Bumpers**. What percentage?

Judge **Arnold**. Nine percent of all the civil cases.

Senator **Rudman**. Of course, that varies a great deal from jurisdiction to jurisdiction. For instance, down in the district of Florida, down in Miami, the waiting time is extraordinary compared to what it might be in New Hampshire or Vermont, but we ought to have those figures.

Senator **Bumpers**. If you could break that down for us, Judge Arnold, for the subcommittee, that would be instructive and helpful to us.

Judge **Arnold**. We have the numbers for each district in the country and for the country as a whole.

APPEALS COURT FOR TAX CASES

Senator **Bumpers**. Would the creation of an appeals court for all tax cases, do you think that would be a step in the right direction?

Judge **Arnold**. Mr. Chairman, that is one of the recommendations of the Federal Courts Study Committee, and the Judicial Conference, whom I represent here, has not yet formulated a position on that, so I do not know that I am prepared to answer it in an official capacity.

The recommendations of that committee are going to go to the conference and, of course, to Congress, as well, and the conference is in the process now of formulating positions. In fact, the Executive Committee of the Conference should do that this month, and that is one of the things that they will react to. I don't know what their positions will be, so I cannot give you an official view on it.

Senator STEVENS. Mr. Chairman, I have got to go to another committee. I just want to ask two questions, one short question, one more provocative, maybe. Has your Conference, the Judicial Conference taken a position on the ninth circuit court?

NINTH CIRCUIT

Judge ARNOLD. I believe not.

Senator STEVENS. I know that the administration had taken a position for it, and Ralph, have you all taken a position?

Mr. MECHAM. We have not. We follow the lead. As a matter of policy, the Judicial Conference takes the lead from the circuit itself, and the circuit is opposed to it. So we are, therefore, opposed to it in that sense.

Senator STEVENS. I would urge you to study it from the point of view of travel. I know more and more people are traveling from California to Alaska in the summertime to go fishing and more people are traveling from Alaska to California in the wintertime. It would seem to me that people ought to recognize that there is a lot of time used by those judges going back and forth.

COURT SECURITY

But the real question I came to ask is: What about security to the courts? Is that your problem?

Judge ARNOLD. Well, it is our problem, and let me tell you what we are doing about it. As you know, two judges have been murdered within the last 2 years, Judge Duronco, who was in his front yard in New York, and Judge Vance, who was at home opening his mail. In fact, I would like to hand to the chairman for the inspection of the committee a couple of photographs that illustrate the kinds of problems that we are facing.

This first photograph was taken in the Office of the Clerk of the Court of Appeals for the Eleventh Circuit in Atlanta shortly after Judge Vance was killed. This is a photograph, obviously, of a bomb that came in the mail and was detected by x-ray equipment.

We are now x raying the mail to every judge in the United States, and I can tell you that I don't even get any mail at home anymore. It all goes to the post office; it all gets x rayed, and the Marshal told us even a letter which is apparently just a flat letter needs to be x rayed because an expert can put a bomb in a letter that weighs as little as 2 ounces.

So one of the things that we are asking for help from Congress on is the money to man those x-ray machines, to hire officers to run them, and we also have a number of court locations that are unprotected with the magnetometers and other security equipment.

If I may hand the chairman a second photograph, this is a 9 millimeter automatic weapon that was discovered by the Alcohol, Tobacco and Firearms Division quite recently. It is almost all plastic, but there is enough metal in it so that it can be detected by the magnetometers that are at courthouse locations. We are told, by the U.S. Marshals Service, that the people who manufactured this gun did so for the express purpose of being able to fool airport and courthouse security.

So there are people out there who are trying, and we feel very strongly in desiring to stay alive, that we should try to meet that.

Senator BUMPERS. Is that one of those weapons that you walk in and say, "No; I'm not an ex-felon, and no, I'm not an escapee," and sign your name and buy?

Judge ARNOLD. I don't know.

Senator STEVENS. I'm sorry to take your time. I spent some time this past weekend with some judges at a reunion, and they told me the security problem is very acute. I would urge you to give us some information on it.

Judge ARNOLD. I hope you saw Judge Eisele up there.

Senator STEVENS. I saw them all.

Mr. MECHAM. Mr. Chairman, maybe before Senator Stevens goes I could make one comment. Our responsibility is court security and peripheral security. The U.S. Marshals Service basically deals with off-site security. I believe they will be coming to you requesting some assistance. We hope that you will look at it.

Senator STEVENS. Thank you very much, Mr. Chairman.

Thank you very much.

SENTENCING GUIDELINES

Senator BUMPERS. Judge Arnold, how well do you think the sentencing guidelines are working? There is another proposal by the Federal Court Study Committee that would abolish minimum mandatory sentencing.

What has been the problem there?

Judge ARNOLD. Well, this is a subject on which the Judicial Conference has taken a position. The problem is essentially twofold: People who commit a certain kind of crime are automatically treated in the same fashion regardless of any other factors, prior record, cooperation, what-have-you.

That, in itself, is contrary, really, to the philosophy of the guidelines, which is that all of the relevant factors about a person should be taken into account in a structured way in order to determine sentencing.

So philosophically, the mandatory minimums are questionable in our view. They also result in more cases being tried because there is no particular incentive for somebody to plead guilty, and neither is there any incentive not to appeal. If you lose a case like that, you automatically appeal it.

Of course, as the committee knows from other budget presentations, they result in the need for additional prison space. So we have, I guess in our minds a yellow light that turns on when somebody sets mandatory minimums.

Judge YOUNG. I would add very briefly to that. Any mandatory minimum, indeed the whole concept of sentencing guidelines, while desirable to ensure uniformity, and cabin in unfettered discretion, so that people similarly situated are treated similarly, in fact, inevitably you are moving discretion into the offices of the U.S. attorneys to make their charging decisions as to what they will drop and what they will charge. There is now greater bargaining, if you will, in what counts go forward and what the charge will be than under a system that leaves the discretion with the judge.

At least with judge-imposed discretion, the exercise of the discretion was completely public, on the record, in open court. That is not the case now, though the guidelines appear to be accomplishing their goal of keeping the judges within the guideline range, primarily.

Senator BUMPERS. This is just a personal observation. But I don't mind telling you, I have concerns about the guidelines. I wrote Judge Eisele a little fan letter when he ruled they were unconstitutional, because I believe he was right.

Judge ARNOLD. Mr. Chairman, I regret to say I wrote the opinion reversing him. [Laughter.]

But I did so with extreme reluctance, because, as a matter of policy, I agree with you.

Senator BUMPERS. But as a matter of constitutional law, you agree that it was permissible to have sentencing guidelines.

Judge ARNOLD. Yes.

Senator BUMPERS. One other thing I would point out, when I was Governor, every penologist I talked to said, "You take away good time credits and you take away our leverage in keeping order in the prisons."

So it was possible, for example, if you had a 9-year sentence in Arkansas, to get out in 3 years, but you had to be a model prisoner to do that. But it was the tool they used to structure the conduct of the inmates. Now with these sentencing guidelines, when you give somebody 10 years, he has to serve, what, 8 years?

Judge ARNOLD. We still have good time, but that is all we have.

Senator BUMPERS. You still have good time, but it is a very minimal thing now. It is not nearly as important as it used to be.

Well, we can sit here and debate that all day long, I guess.

DRUG DEPENDENT OFFENDERS PROGRAM

Judge Arnold, you mention on page 23 of your testimony that you are asking for $10 million to increase your Drug Defender Dependent Program.

How is that program working?

Judge ARNOLD. It works extremely well. We have a study, for example, that shows that people who are supervised, drug dependent offenders who are supervised and who are tested periodically for drug usage, that population has a much smaller chance of committing new crimes or falling from grace than people who are not under supervision. Incidentally, that study is old. We are going to do another study to update that.

But it stands to reason that the more attention you pay to people and try to deal with their problems, the more responsive they are going to be. We have about 14,500 people in the Drug Dependent Offender Program as of 1989. That doesn't count the alcohol-related people. This is just drugs other than alcohol.

That has gone up over the decade of the eighties by 205 percent. There are many more of those people than there used to be.

I think it is probably not well known, but the Federal judiciary actually runs the biggest, single drug treatment program in the country.

Senator **BUMPERS**. I did not know that until you read your statement.

Senator **RUDMAN**. In fact, we have just reprogrammed some money, I believe, to make it possible for that program to continue.

NINTH CIRCUIT

Senator **BUMPERS**. Judge, on the split of the ninth circuit that Senator Stevens mentioned, I think I favor that, but I have not seen sufficient data on the case load. All I know is that California is probably going to have between 28 and 30 million people this year, just in the one State. I assume the ninth circuit case load reflects the burgeoning population of all the Western States, particularly California.

What do we have, 23 or 24 judges on the ninth circuit?

Judge **ARNOLD**. I think there are more. I think there are 25 or 27.

Senator **BUMPERS**. Ralph, do you know how many there are?

Mr. **MECHAM**. I want to say 28 or 29, but I will go check it; 28.

Senator **RUDMAN**. It seems foolish to continue that. You are just going to be adding more and more judges. Concerning the point that Senator Stevens made about people traveling back and forth to Alaska, it doesn't make any difference what you do; Alaska just happens to be a long way from anybody, so you are still going to have a lot of travel time for whatever you do in that ninth circuit. But it seems to me that this proposal of Senator Gorton's, for example, to split that circuit, makes some sense. Has the conference taken any position on that?

Judge **ARNOLD**. The Judicial Conference has not taken a position. The ninth circuit is against it. But, without referring to the ninth circuit as such at all, because I don't have any statistics on the ninth circuit, I can say that we have 10 judgeships on our court. We now have nine judges. There is a vacancy, but we have a proposal in to get two more judgeships.

One of the things that you think about when you expand the size of the court of appeals is coherence; the more possible combinations of judges on panels of three that you have, the more opportunity there is for divergence. Even without meaning to do it, the more minds and combinations of minds that apply to a certain problem, the more danger you are in of deviating from circuit precedent. I have to think that as the number goes up into the twenties, those dangers increase.

Senator **BUMPERS**. I think that is a very legitimate point.

Senator Rudman.

DIVERSITY ISSUE

Senator **RUDMAN**. I just have a couple of questions, really. On the diversity issue, the Federal Courts Study Committee recommended that Congress limit Federal jurisdiction to complex multistate cases, I assume you favor that?

Judge ARNOLD. The Conference favors it, Senator.

Senator RUDMAN. The Conference.

Judge ARNOLD. The Conference has not taken a position specifically on that Federal Courts' Study Committee proposal as such, but the Conference has gone on record as favoring the elimination of diversity jurisdiction.

Senator RUDMAN. Do you know what percentage of cases are based on diversity jurisdiction? I would think it would be fairly heavy.

Judge ARNOLD. In our court, about 30 percent.

Judge YOUNG. In our court it is about the same.

Senator BUMPERS. Would you not make any exceptions for jurisdictional amounts in diversity cases?

Judge ARNOLD. If you are asking me as a person——

Senator BUMPERS. I am talking about the Conference.

Judge ARNOLD. I don't know. I don't know whether the Conference does.

Senator BUMPERS. The Conference just wants to eliminate diversity, period.

Judge ARNOLD. I suppose that as between two propositions, the Conference would prefer an increase in jurisdictional amount to no change, and, in fact, it was increased quite recently to $50,000. I can't give you the number, but there is a measurable effect from that.

Another thing that the committee, if I may just add one point that is relevant to this, is suggesting is that in computing the $50,000 you eliminate nonpecuniary items, like pain and suffering and punitive damages. If you do that, the ability of a lawyer just to blow up the prayer for relief and get around the limit that way is severely restricted.

SPACE AND FACILITIES

Senator RUDMAN. The other question I have is the Judicial Conference has proposed legislation that will make you independent of OMB and the GSA in acquiring and maintaining your space and facilities. Would you like to comment on that.

Judge ARNOLD. I appreciate that opportunity. I think Judge Young and Mr. Mecham, as well, will want to talk about it, but we think it is essential. It is really the only significant aspect of our operations where we are not treated as an independent branch of Government.

We are subject to GSA priorities as far as space and buildings are concerned. We and GSA, in turn, as an agency of the executive branch, is subject to the OMB review process. We think this adds as much as 2 years in time to the length of time that it takes to get a building built. If I may give a local example, Senator, when I came on the district court in 1978 in Little Rock, I was given the job by the chief judge as a sort of congressional officer. It was my job to get a new wing built, to work with Congress and the GSA to get a new wing built for three new courtrooms, and we had the proven need for that. Nobody disputed that.

In 1980, a new judge was sworn in, a district judge named William R. Overton, who was a very fine judge. He died before the new wing was built and never during his tenure as a district judge did he have a courtroom permanently assigned to him. He died, lamentably, too young, but we didn't get that wing built until 2 years ago.—

I am not trying to blame the whole thing on GSA, but part of the delay there is due to the fact that we have to go through their priority process.

Senator RUDMAN. Let me ask this question. I understand the proposal, and I am basically sympathetic to your reasons for supporting it. I am concerned that building buildings and leasing space, and so on, is a specialty in itself. You are going to have to build up a substantial organization to deal with that. Could you comment on that?

Mr. MECHAM. Basically, our proposal is that we could use GSA extensively in all aspects of the program you just talked about. The difference would be that we would have the money instead of them having the money; we could set our own priorities instead of them setting our priorities. We would be able to deal with Congress in terms of getting our needs met directly instead of having to go through both GSA and OMB, both of whom manage to filter out and take us for granted.

We are rarely consulted on priorities, and the result is our needs, we feel, are not being adequately met by the present system. We feel that if we control the money through your good offices that we can negotiate with them and get our maintenance taken care of the way it ought to be and the buildings taken care of the way they ought to be. I think we can do that within present moneys we now receive or with the increases that historically will be given for rent or SLUC or whatever GSA calls it.

Senator RUDMAN. What you are saying is you would like to be able to determine within the Judicial Conference what the priorities are. The courts would have to make a decision, "We need a new court in city *x*." You would then come to the Congress and you would make that request appropriately. You would either get it or not get it. If you got the money for that particular building, then you would use the resources of GSA to assist you in the construction and manning of that building. Is that the plan?

Mr. MECHAM. That would be the plan. We would like to have a fail-safe option if GSA dragged their feet and so on. We would anticipate that would not happen very often. So we would hope we would not have to build up a big bureaucracy. Undoubtedly, there would have to be some modest increase, but we think the demands of the judiciary would have a much better chance of being met if we had the opportunity of controlling our own moneys.

Senator RUDMAN. I can tell you by personal observation that some of the facilities we have for the courts in the Federal judiciary are pretty shabby. How the situation on the first circuit up in Boston has been allowed to remain as long as it has is unbelievable. You would have to see that to believe it.

Judge YOUNG. Judge Nelson, who is in good health, fortunately, was with us 9 years before he had a courtroom assigned to him. I was an expansion franchise in the sense that the legislation that authorized the judgeship to which I was appointed was in place 2 years before I was confirmed, and I waited 2½ years before I had a courtroom in which to sit.

In the meantime, I sat in a GSA meeting room. We placed a table at the end of the room, and I held court with chairs for the jurors along the side. We did have a witness box that we scrounged from somewhere, only the witness box was higher than I was, and I would look up at this witness and keep him in order.

You truly will promote efficiencies by the proper control of this proposal. If we had the ability to set our own priorities and justify those priorities without the inevitable lag time of going through GSA, that would help us a great deal.

Senator RUDMAN. We will look at your proposal very seriously. We do have some problems and unmet needs within the Federal judiciary in this regard. I recognize what you say about GSA and OMB having gone through a situation with the first circuit last year. That finally got turned around, but had it not been for some intercession, I am not sure what would have happened.

Go ahead. I do not have any other questions.

ASSISTANT U.S. ATTORNEYS

Senator BUMPERS. Judge Arnold, one final question and this is really difficult for you to answer. There was an increase of 800 assistant U.S. attorneys in the fiscal year 1990 budget. That is a lot.

With sober reflection and thought, do we really need 800 additional U.S. attorneys? It is difficult for you, from your standpoint, I guess, to evaluate that. We just got through adding over 400 and now are planning for another 800 this year. For example, in Arkansas, we normally, rule of thumb, get 1 percent. We have 1 percent of the population of the country, so presumably we get 1 percent of the dough. In this case, that means eight assistant U.S. attorneys.

We may need them; I don't know. I have not talked to Chuck Banks. He may be short-handed, and I will talk to him about it. But that is a lot.

Judge ARNOLD. We got 471 new ones in 1989 and 800 new ones in the new provisions. The question of whether we need them is a question for the Department of Justice and the Congress to decide.

My feeling is that if all the crimes that Congress wants prosecuted are going to be prosecuted, then we need those people, and I would just implore you to have in mind, and I believe that this committee does have in mind, that when that happens, there is an effect on the courts. They are put in place to bring criminal prosecutions, and they do bring them.

That means that the courts have got to handle them.

Senator BUMPERS. The Bureau of Prisons has to house them.

Judge ARNOLD. Absolutely.

Senator RUDMAN. That is what we did last year. We did the whole system, and we have got to do it again.

Senator BUMPERS. I think that the area that is most efficient is the Bureau of Prisons. The Federal inmate population has doubled since 1980, and is anticipated to double again. Everybody is willing to hire U.S. attorneys and everybody is willing to put on more judges. U.S. marshals, DEA—you just cannot give them enough money.

And everybody wants offenders captured and brought to justice and sent away for life, but they don't have a place to put them. You have got a great big funnel here, in effect.

Judge ARNOLD. It seems more like an hourglass to us, Senator. The Bureau of Prisons does an extremely good job; there is no question about that. But we are in the middle, and we feel pinched. When you say everybody wants to put on more judges, I think that is true, but I feel I should point out to the committee that it is not happening.

Senator RUDMAN. I think that it is going to happen this year. I do believe that.

ELECTRONIC MONITORING

Senator BUMPERS. One final question, Judge Arnold, and that is this electronic monitoring system for people on probation. I have never understood how it is supposed to work.

Judge ARNOLD. Well, we have pilot projects now in two districts for parolees who are being—we call it either home detention or home confinement, and they wear bracelets that are programmed to transmit certain radio impulses that are timed in accordance with a preset schedule for that person. If he or she needs to go to the doctor or work or whatever it might be, that is OK, but if they leave their home without it being preprogrammed, then a light turns on or a bell goes off somewhere and we know that they are violating their conditions.

We are asking for a substantial increase in that program for fiscal year 1991. There are many good reasons for it, one of which is, it costs a lot less to supervise people by that method. You are talking $12 to $15 a day for people in home confinement as opposed to $30, $35, $40 for people either in halfway houses or in actual prisons. We are working cooperatively with the Bureau of Prisons on that program.

Senator BUMPERS. For example, if the parolee calls in and says, "Tomorrow I have got to go downtown to M and Sixth Streets to the doctor."

Now, does that monitoring device tell you where he is?

Judge ARNOLD. No, sir.

Senator BUMPERS. Do you have to call the doctor to see if he is there?

Judge ARNOLD. I will have to get a detailed answer for you on that.

Judge YOUNG. The monitoring device, as I understand it, having used this or explored the use of it with a pretrial detainee, the monitoring device is designed so it cannot be removed. It can be removed, but it is very difficult to remove.

The device is something like a Lo-Jak in a car, the frequency ties in to a monitor. When it goes beyond the range of that monitor, it sends off a signal.

The signal may well be received in some other city, actually, but the signal alerts the monitoring machinery that the person is beyond the limits that they are supposed to be within.

All you do is cut down on the lead time for escape, monitoring whether you are home and the like.

Senator **Bumpers**. Do you have any further questions?

Senator **Rudman**. No.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Bumpers**. Judge Arnold, thank you very much for being with us, Judge Young, thank you all.

We really appreciate your presentation here this morning. I have some additional questions that I will submit for response in the record. Thank you.

[The following questions were not asked at the hearing, but were submitted to the judiciary for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

Supplemental Funding

QUESTION:

The Senate has included $23,766,000 in the FY 1990 supplemental to cover mandatory pay costs of the Judiciary as well as to meet most of the shortfall in fee collections. Does your 1991 request include in the base the 1990 supplemental request and, if so, can your request be reduced by that amount?

ANSWER:

The following table is a breakout of the supplemental requests and the Senate recommendations:

	Request	Recommended
Supreme Court		
COLA for Article III Judges	$ 63,000	$ 63,000
Courts of Appeals, District Courts and Other Judicial Services		
COLA for Article III Judges	5,253,000	5,253,000
Restoration of Fees	22,750,000	17,750,000
United States Sentencing Commission	700,000	700,000
Totals	$28,766,000	$23,766,000

The FY 1991 base includes the requested amounts for the Article III Judges' COLAs and the cost of additional personnel for the United States Sentencing Commission and cannot be reduced as these requirements will continue in FY 1991. However, the FY 1991 request has already been reduced by $22,300,000 to reflect the amount of supplemental funding for restoration of fees not required in FY 1991 as shown on page 5.4 of the FY 1991 budget submission.

ARTICLE III JUDGESHIP VACANCIES

QUESTION:

How many Article III judgeships have been vacant for more than a year? Can you tell us what kind of impact these vacancies have had on the processing of cases? What is your pending caseload and how many cases does a judge normally handle in the course of a year? Are the pending cases in those courts with vacancies more than a year significantly higher than the national average?

ANSWER:

On May 1, 1990, two court of appeals judgeships and 15 district court judgeships had been vacant for more than one year. Long-term vacancies inevitably have an impact on the processing times of the courts and on the pending caseload. The impact of the vacancies is not always immediately apparent because many courts have senior judges who provide substantial assistance and sometimes take extra cases to minimize the effects of the vacancy. In small courts the impact of a lengthy vacancy can be substantial, especially if the district has a heavy criminal caseload. The processing of civil cases can grind to a halt. The longer a position remains vacant, the greater the eventual impact will be on processing times and on the backlog of cases.

The pending caseload for the courts of appeals was 577 per authorized three-judge panel on June 30, 1989. Average dispositions per authorized panel were 719. In district courts the average pending caseload per judgeship was 468 on June 30, 1989 and the average disposition rate was 457.

In district courts with the longest vacancies, the average pending caseload is significantly higher than the national average. It is not significantly higher in all courts with one-year vacancies.

SENTENCING GUIDELINES

QUESTION:

What part of your criminal caseload is resolved through plea negotiations? Do you believe the sentencing guidelines reduced the incentives for defendants to plead guilty?

ANSWER: There is concern within the Judiciary that the sentencing guidelines contain disincentives to plea negotiations. In particular, the guidelines provide that, in determining the applicable offense level, the court is to take into account all "relevant conduct", which for many offenses can include conduct not set out in the count of conviction. Accordingly, it would seem that a defendant would have little to gain by agreeing to plead guilty to one count in exchange for the dismissal of other counts, when the conduct charged in the other counts could be considered in establishing the applicable guideline range.

The statistics maintained by the Administrative Office, however, do not currently indicate any decline in the rate of cases disposed of by pleas of guilty or nolo contendere. The percentage of convictions obtained by pleas has remained at 87 percent for each of the last six years. The data is not sufficiently specific, we believe, to warrant any conclusion about the sentencing guidelines' effect on the rate of guilty pleas. There are many factors that affect the incentives to plead, including the government's choice of charges and mandatory minimum sentences set by Congress for drug offenses and certain other offenses. We also believe that it may be too early to see any effect the guidelines may have on guilty pleas. As various legal issues concerning the guidelines are resolved and as counsel become more knowledgeable about the operation of the guidelines, plea negotiations may be affected.

DRUG RELATED CASELOAD

QUESTION:

In your statement, you note that while criminal filings increased by 23.8 percent from 1984 to 1989, drug cases more than doubled during that same period of time. Do you find that a drug case requires more court resources than an average criminal case?

ANSWER:

Drug cases do require more resources than the average case because of the number of defendants per case, the percentage of cases requiring trial, and the length of time required for disposition. The ratio of defendants to cases for drug offenses filed in 1989 was 1.9; for all other offenses combined it was 1.2. The median time for obtaining a judgment in a drug case was 3.2 months during 1989; for non-drug cases, it was 2.3 months. Drug defendants go to trial at a rate of approximately 17 percent, while the rate for other offenses is 12 percent.

By their nature, drug cases generally involve more than one person. Often there is an extensive network of importers, buyers, sellers and users. As a result, a much greater proportion of drug cases contain multiple defendants. Each defendant may have his or her own attorney, and the cases against all may be delayed while motions are filed by each. Scheduling can be time-consuming and create additional hearings for motions for continuances, particularly when some of the defendants are involved in other cases at the same time. Drug cases also tend to involve a variety of inter-related behaviors. A conspiracy is nearly always present and frequently charged in a separate count, along with use of a telephone to aid distribution, money laundering, firearms, importing, and sometimes continuing criminal enterprise or charges under the RICO statutes. The interweaving of all of these parts into a whole case can require more of the court's time than perhaps cases for most other offenses that more frequently involve fewer defendants and fewer charges within the same case. In addition, federal public defenders can represent only one co-defendant, because of conflict-of-interest considerations. The others must be represented by panel attorneys, at a greater average cost per case.

QUESTION:

What has been the impact of rising criminal filings on the processing of civil cases in district courts? In the Courts of Appeals?

ANSWER:

The increasing criminal caseload is resulting in a delay in the processing of civil cases in the district courts and will eventually have the same result in courts of appeals. In districts with the largest criminal dockets, the number of civil cases reaching trial has dropped as much as 50 percent since 1985 and the median time from filing to disposition for civil cases closed by trial has increased by as much as 30 percent. Nationwide, the number of civil cases closed by trial has dropped 15 percent since 1985. Because of the increasing criminal caseload, and because a higher percentage of criminal cases go to trial, many districts are having to devote an increasing portion of their time to criminal cases, at the expense of the civil docket. In 1985 there were only 5 district courts where criminal trials represented more than 50 percent of all trials; in 1989 there were 25 districts with criminal trials in excess of 50 percent of the total. Nationwide, the percentage of criminal trials has grown from 31 percent to 40 percent. In the last year there were 8 districts which devoted more than 60 percent of their trial hours to criminal cases. In some offices within districts, resident judges devote nearly 100 percent of their trial time to criminal.

In courts of appeals the impact of the rising criminal caseload on processing times is beginning to appear. We have no specific statistics on this subject yet, but with the recent increases in the number of criminal appeals, and the need to reach a decision quickly, especially in sentencing appeals, the processing of civil appeals will suffer.

QUESTION:

For several years now, the Federal government has been providing increased resources to law enforcement agencies in Florida and the southwest border. As a result of this concentration of enforcement personnel, have you found any geographic shift in criminal filings which would indicate that traffickers are now using other transshipment routes?

ANSWER:

There has been a slight geographic shift in the rate of increase in drug related criminal filings, but not in the absolute numbers of cases. The districts of Florida Southern, Texas Southern, Texas Western, California Southern, and other districts with perennially high drug activity still have the majority of drug filings.

However, in some of the other border states such as Arizona, New Mexico, Georgia, Washington, and Oregon, the drug caseload is increasing at a faster rate. In addition, districts with traditionally low drug activity, such as Iowa Northern and Tennessee Western, have shown significant increases in criminal drug cases in the last five years. We have yet to see the effects of the increased enforcement resources provided in FY 1990. Those additions are very likely to result in even larger numbers of drug cases in all of the traditional drug areas. There is no conclusive evidence yet, in the data on court filings, to indicate that traffickers are now using other routes.

DEATH PENALTY CASES

QUESTION:

How much is included in the Defender Services budget for "Death Penalty Cases"?

How much are these cases costing? Please provide for the record the actual cost per case to date beginning with fiscal year 1989.

ANSWER:

There is approximately $37,000,000 included in the fiscal year 1991 Defender Services appropriation request directly related to the representation of death sentenced inmates in federal court.

New death penalty habeas corpus petitions in fiscal year 1991 will result in a total projected cost of $75,000 per case (excluding costs associated with the funding of death penalty resource centers).

Specific information on the actual cost per case is not available at this time. The fiscal year 1989 cost for Death Penalty Resource Centers was approximately $3,270,000, but it is difficult to translate this amount into cost per case because the Centers handle consultations and training as well as direct representation. A portion of the cost sustained in the Federal Defenders' offices is also associated with representation of death penalty habeas corpus cases, but these costs are included in the total caseloads of the Defenders and not specifically identified. Data collection on panel attorney representation of death penalty cases, the most significant cost, is currently being revised to provide information on the number of cases and average cost per case paid for the fiscal year. In order to collect this data it has been necessary to revise the form used for the assignment of panel attorneys and to train the Courts in the use of the revised form. Those actions are now in the process and when completed it will be possible to derive cost data from the voucher payment system.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

AUTOMATION

QUESTION:

In last year's bill, the committee established an Automation Fund to assist in implementing your five-year court automation program. I see you are requesting an additional $16 million for the continued expansion of your automation program. How many ADP support positions are paid for from the Fund? Will automation reduce the cost per case filed? If so, when will we see some savings? Are all courts required to accept and implement these automated systems?

ANSWER:

In fiscal year 1990, there will be 164 court automation support positions paid for by the Fund when funding for the positions is deposited into the Fund.

The anticipated benefits of automation include improving service to the public, increasing productivity, and permitting existing staff to handle a greater workload more efficiently and effectively. Work measurement studies are underway to determine the productivity gains resulting from automation and to adjust the staffing formulas for the courts. Automation has, however, been very recently introduced into many courts. Once the majority of the courts have fully integrated automation into their daily operations, it is anticipated that another work measurement assessment will be required to determine the full extent of productivity gains from automation.

Courts are not required to accept and implement automated systems. In fact, all courts must apply in order to be selected for the standardized electronic docketing and case management systems. Presently, all but 1 district court, 7 bankruptcy courts, and 2 appellate courts have applied and been selected for implementation of these systems.

SPACE ALTERATIONS

I see where you have requested a $34 million increase in your space alteration program.

I am interested in knowing the status of the renovation and refurbishing of the late Judge Haynsworth chambers in Greenville, South Carolina. These chambers are now vacant and Judge Billy Wilkins would like to move into them. Unfortunately, I am told this chamber has been untouched since constructed in the early 1930's.

QUESTION:

Have you budgeted for the costs of renovating the old Haynsworth chamber? How much to you anticipate the renovation will cost?

ANSWER:

The death of Judge Haynsworth took place after the 1991 budget call had been submitted by the fourth circuit council; therefore, no funds were budgeted for renovation. There is a requirement for substantial demolition and renovation due to the age of the chambers, and a requirement for a separate heating and air conditioning system for the chambers. Initial cost estimates are in the $400,000 to $500,000 range. Design options, selected by Judge Wilkins for the renovated chambers, were forwarded to the General Services Administration during the week of April 24, 1990 to determine the cost of this project.

QUESTION:

I see where you are also requesting no-year authority for space renovation costs. How will this improve your ability to manage the space alteration program in the courts?

ANSWER:

The Judiciary is responsible for paying the General Services Administration (GSA) for certain items such as judges' benches and witness boxes. The GSA arranges for the project and must have funding commitments in hand at the time of contract initiation. Should a contract be delayed for any number of reasons (e.g., insufficient number of bids, a change in the project scope) GSA can accommodate such circumstances because it is not constrained by the requirement to have the funds for a given project committed by the close of a fiscal year. A delay can have a very significant impact on the Judiciary, however. Since funds are appropriated on an annual basis, and must be obligated by the close of a given fiscal year, a delay in the contract process puts the Judiciary's financial cycle out of sync with the GSA contract award schedule. No-year authority will provide the ability to use funds that were appropriated in a prior year for a specific project but were not obligated due to the delays in contracting or construction schedules. The authority for no-year funds will allow the courts the flexibility needed to respond to emergency situations such as multi-defendant proceedings which require special alterations to courtrooms. It will also provide some flexibility to use funds from projects which may have been overestimated or cancelled by GSA in a prior fiscal year.

NEW JUDICIARY BUILDING

QUESTION:

What is the status of the construction of the new Judiciary Building on Capitol Hill? How much square footage will be utilized by the courts and how much will be available to Executive Branch agencies?

ANSWER:

The new Judiciary Office Building is in the final design stage and will house the Administrative Office of the United States Courts, Federal Judicial Center, United States Sentencing Commission, Judicial Panel on Multidistrict Litigation and retired Supreme Court Justices. The building will provide office space for approximately 1,169 Judiciary employees. It has been developed with the main purpose to centralize, in one location, the support elements of the Federal courts and will not include space for the courts themselves. This has resulted in a design that will maximize the efficiency of available office space in the building.

The building contains a total of 490,751 square feet with the Judiciary occupying 368,719 square feet or 75 percent. The remaining 25 percent space in the building not occupied by the Judiciary will be offered to other Federal government entities.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES

PROBATION AND PRE-TRIAL SERVICES

QUESTION:

You are requesting 116 additional positions and $1.98 million for probation and pretrial services to handle the increased impact of Sentencing Guidelines on probation offices.

- Can you explain why the Sentencing Guidelines have increased your staffing needs?

- What portion of probation and pretrial staffing is dedicated to fulfilling Sentencing Guideline requirements?

ANSWER:

When the sentencing guidelines took effect on November 1, 1987, it was necessary for the district courts to modify sentencing procedures and for the Probation Service to modify the format of the presentence report as well as disclosure procedures to accommodate guideline sentencing. The Model Local Rule, the sentencing procedures suggested to district courts by the Judicial Conference Committee on Criminal Law and Probation Administration, provided for a process in which the U.S. Attorney and defense counsel have the opportunity to respond to disputed matters in the presentence report prior to sentencing in an effort to resolve some of the issues before sentencing. The new format incorporating the calculation elements of the guidelines and the facts underpinning the calculations, the new disclosure procedures, and the revision process of the report, not only increased the duties of probation officers and secretarial staff but also increased the time frame for the production of the reports.

Using workload formulas pertaining to the preparation of presentence reports, 30% of probation and pretrial services positions are dedicated to the implementation of sentencing guidelines. These positions include the portion of time dedicated to the presentence reports by probation officers, managerial positions, and clerical staff. Prior to guidelines approximately 20% of staff was dedicated to presentence report preparation.

As a result of the increased workload, the work measurement formula for presentence reports which determines staffing needs was revised. The new formula has been integrated into the staffing projections at the same rate that the projection for the proportion of offenders sentenced under the guidelines has been determined.

SENTENCING GUIDELINES

QUESTION:

Many judges argue that the Sentencing Guidelines are too rigid. Nonetheless, is the value of the added information collected by probation officers thought to be helpful by the judges when sentencing defendants?

ANSWER:

The additional information contained in presentence reports that did not appear in pre-guideline sentencing is information required by the structure of the sentencing guidelines. The guidelines are essentially a series of judicial findings of fact that translate to months of imprisonment. Probation officers investigate the facts relating to each application of the guidelines that are relevant to the particular offense and the particular offender.

Rule 32 of the Federal Rules of Criminal Procedure require that the probation officer set forth the application of the guidelines that the officer believes is accurate. The additional information consists of the full guideline application as well as the facts upon which it is based.

Available information from sentencing judges indicates that they rely on the probation officer's initial application of the guidelines as the basis for the sentencing hearing. Without the additional information, sentencing hearings would be more time consuming.

AUTOMATION SYSTEMS

QUESTION:

You are requesting an increase of $14.5 million for the expansion of automation systems. In particular, the request is for data processing for district court, bankruptcy court and probation automation, and for the nationwide data network project. What is the status of automation of the courts? What are the shortcomings?

ANSWER:

Presently, there are 28 district, 31 bankruptcy, and 7 appellate courts fully operational on the electronic docketing and case management systems. In addition, there are installations well underway in 9 bankruptcy courts and 3 appellate courts. The Probation Automated Case Tracking System (PACTS) is on schedule and should be substantially completed by the Summer of 1990. According to the schedules set forth in the Long Range Plan for Automation in the U.S. Courts, the implementation of the electronic docketing and case management systems, the financial management system, and the probation case tracking system in the courts will be completed by the end of fiscal year 1992. The award of the data communications network contract is scheduled for fiscal year 1990. This contract will provide the communications backbone for JURIST, the Judiciary's fully integrated automation and telecommunications system.

The Judiciary's automation program does not suffer from any major shortcomings at present. After years of underfunding, the program has been revitalized in fiscal year 1990 by the establishment of the Judiciary Automation Fund and appropriation of full funding levels for automation. The Judiciary greatly appreciates the Appropriations Committee's commitment to its automation program. The Judiciary has made many adjustments in order to absorb the substantial infusion of funding and staff for automation and to accommodate the rapid expansion of the automation program. These adjustments will be successfully made in fiscal year 1990, and the most significant benefits of the funds expended for automation will be seen in fiscal year 1991 and beyond as the automation program reaches maturity.

FEDERAL COURTS STUDY COMMITTEE

The Federal Courts Study Committee released its report on April 2. The report says that "It appears that the long-expected crisis of the federal courts, caused by unabated rapid growth in case filings, is at last upon us."

Among other things, it recommends that federal officials with authority for prosecuting drug cases should direct cases to state courts and that Congress should direct additional funds to states.

QUESTION: Do you agree that more drug cases should be directed to state courts?

ANSWER: The Judicial Conference has not yet had a opportunity to consider this issue. The Executive Committee of the Judicial Conference, however, recently voted to oppose a portion of a bill that would create a nationwide "Federal Day", whereby, one day each month, all drug cases that would ordinarily be filed in the state courts would be filed instead in the federal courts. The Executive Committee noted that such a procedure could double the number of drug related cases filed each year in federal courts, severely impacting the civil caseload of the federal courts, and that the costs of such a provision could be between $70 and $310 million annually. The Executive Committee also cited, in support of its conclusion, the recommendation of the Federal Courts Study Committee that federal prosecutions should be limited to "charges that cannot or should not be prosecuted in the state courts...." In addition, the Judicial Conference Committee on Criminal Law and Probation Administration has endorsed the Federal Courts Study Committee's recommendation concerning the proper allocation of criminal cases between the federal and state courts.

QUESTION: **What percentage of criminal trials in the federal courts are drug-related cases?**

ANSWER: During 1989, a total of 7,542 criminal defendants were disposed of by trial. Of this total, 2,849 or 38 percent were drug-related.

GAO REPORT

(CLERK'S NOTE.—Subsequent to the hearing, the Sentencing Commission submitted a letter in further response to Senator Rudman's questions regarding the General Accounting Office report. By direction of the Chairman, the letter has been printed in the record.)

(The letter follows:)

LETTER FROM WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION

May 9, 1990

Honorable Ernest F. Hollings
Chairman, Subcommittee on Commerce,
Justice, and State, the Judiciary,
and Related Agencies
S-146A Capitol Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing to provide a response for the Hearing Record to questions posed by Senator Rudman regarding recent General Accounting Office findings critical of internal Sentencing Commission operations.

The GAO findings mentioned by Senator Rudman were specifically addressed in my letter to you dated March 29, 1990, and in my supplemental written testimony prepared for the House Subcommittee on Criminal Justice. I am enclosing copies of these documents and respectfully request that they be made part of the Hearing Record in response to Senator Rudman's questions.

If I can be of further assistance on this or any other matter, please do not hesitate to contact me.

With highest personal regards and best wishes, I am,

Sincerely,

Billy Wilkins
William W. Wilkins, Jr.
Chairman

Enclosure

Sentencing Commission - GAO Report

A recent GAO report found that the Sentencing Commission has fallen behind on major priorities such as establishing a monitoring system, and evaluating the impact of the guidelines. GAO acknowledges that part of this is attributable to the constitutional challenge resolved last year. However, GAO also found that the delays were caused by organizational disarray at the Commission. GAO found:

- The Commission has no game plan

- The Commission did not have clear lines of authority

- Research led by an individual commissioner paralleled staff research and may come into conflict with it

- The Commission has experienced vacancies and turnover in key positions

Would you care to comment on the GAO findings, and on any progress which has been made to address the problems at the Commission?

LETTER FROM WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION

March 29, 1990

Honorable Ernest F. Hollings, Chairman
Subcommittee on Commerce, Justice, and State
Committee on Appropriations
United States Senate
Washington, DC 20510-4002

Attention: Ms. Dorothy Seder

Dear Senator Hollings:

Recently, the House Judiciary Committee's Subcommittee on Criminal Justice held a hearing on, among other matters, the management and operation of the United States Sentencing Commission. Because the hearing generated some negative publicity, especially in connection with testimony given by the General Accounting Office (GAO), I wanted to take the opportunity to make sure that you were fully apprised of the relevant facts.

The thrust of GAO's position at the hearing was that the Sentencing Commission needs to improve in areas of internal administration. Before commenting more specifically on GAO's testimony, I want to emphasize that GAO in no way sought to call into question the integrity or effectiveness of the Commission's sentencing guidelines, or the Commission's unblemished record of having met every statutory deadline given it by Congress. The "sweeping" change in federal sentencing that Congress called for in our enabling legislation[1] is well underway; the guidelines are working, and by all indications to date, working well.

That observation made, I do want to touch on some of the suggestions GAO made as to how the Commission might operate more effectively. One of GAO's principal suggestions is that lines of authority need to be more strictly followed. The Commission agrees. Moreover, as GAO conceded (albeit in one little mentioned sentence in its written testimony) the needed steps have already been taken. In the extremely hectic and time-pressured days of guideline drafting and early refinement, informality was an aid to getting our work accomplished. More recently, the Commission has closely adhered to the centralized lines of authority which GAO advocated. This is simply no longer an issue.

GAO questioned whether the Commission had adequately planned for its activities "through the post-guideline development period." While we agree with GAO that the intense phase of guideline development--followed by more than a year of constitutional litigation over the validity of the guidelines[2]--temporarily hampered our planning abilities, we want to stress that long range planning has always been an integral part of operations at the Commission. In this regard, I have enclosed a letter on long range planning that I submitted to Congressman Schumer, the chairman of the Criminal Justice Subcommittee, in response to his request for a summary of the Commission's plans to accomplish future tasks.

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[1] See Pub. L. 98-473, 98th Cong., 2d Sess. (Oct. 12, 1984); Senate Rep. No. 225, 98th Cong., 1st Sess. 65 (1983).

[2] The Supreme Court, of course, decisively settled the constitutional questions in January 1989. See Mistretta v. United States, 109 S.Ct. 647 (1989).

GAO complained that "in its four years the Commission has had an equal number of staff directors" and that the position of research director went unfilled for 18 months. Regrettably, these characterizations are particularly trivial and misleading. One of our past staff directors left after being appointed to the federal bench, and another of the four the Commission "has had" is our present staff director, who joined the Commission in 1986, rose through the ranks and enjoys the full support of the entire Commission.

With respect to the period that the research director's position remained vacant, I made the decision that our scarce resources were better directed at that time toward drafting guideline amendments and training the thousands of judges, practitioners and probation officers who needed to become conversant with the guidelines. This decision was reinforced by my view that it would have been difficult to hire and imprudent to use a research director to implement a long range research agenda when the Supreme Court was yet to rule on the Commission's constitutionality. In fact, two associate research directors took charge of what research was then necessary. It is important to note that monitoring and evaluation progressed during this period, another source of GAO complaint, but again, progress was made in realistic conformity with the Commission's more immediately pressing obligations, its limited resources and the backdrop of constitutional uncertainty. Since the March 7 hearing, the Commission has in fact hired an able and experienced individual who shortly will begin work as the Commission's director of research. Thus, this issue is also now moot.

Especially unfortunate is GAO's assertion that the Commission has missed deadlines. Apparently referring to some of our internal target dates for interim phases of work, GAO left the impression that the Commission has frequently slipped in meeting legislative directives. As noted earlier, the Commission has, despite formidable obstacles, met every statutory deadline for work, and I might add, we will continue to do so.

Lastly, let me comment on a GAO criticism with which, I suppose, we must agree to disagree. Somewhat astonishingly, GAO criticized the Commission's use of Commissioners to direct Commission projects. The reasons for this manifestly sensible practice are fully set out in the written testimony I presented at the hearing and which I have enclosed, along with GAO's written testimony. (My testimony will also amplify many of the other points made in this letter.) Suffice it to say here that a high degree of Commissioner involvement in the work of the Commission is precisely what Congress had in mind when it legislatively crafted the Commission, and what the President had in mind when he chose its members because of their backgrounds and expertise.

In closing, I want to emphasize that the U.S. Sentencing Commission continues to march lock step with its congressional mandate to implement a most dramatic and important change in the federal criminal justice system. GAO has made suggestions as to internal management from which we can learn; but its criticisms should not distract from the fact that we have on a timely basis written guidelines for over 800 federal offenses, trained thousands of individuals, and implemented a fairer, more honest, uniform and effective system in which over 30,000 offenders have been successfully sentenced to date.

If I can answer any additional questions you or your staff have about this matter, please do not hesitate to contact me.

With highest personal regards and best wishes, I am

Sincerely,

Billy
William W. Wilkins, Jr.
Chairman

Enclosures

SUPPLEMENTAL WRITTEN TESTIMONY OF

WILLIAM W. WILKINS, JR.
CHAIRMAN, UNITED STATES SENTENCING COMMISSION

BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE OF THE
HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

MARCH 23, 1990

Because the written statement of the General Accounting Office was not provided to the Commission until the afternoon before the hearing the following day, I wish to take this opportunity to submit for the record these written comments that address specific statements made by the GAO.

I. *The GAO criticizes the fact that I have appointed individual Commissioners to direct major research and legal projects.*

Congress envisioned an active, hands-on role for each Commissioner. It would be a tremendous waste for the Commission to turn its back on the substantive skills and expertise that individual Commissioners can bring to bear on special projects. Current Commissioner-led projects, such as an extensive examination of alternatives to incarceration and an in-depth look at plea bargaining practices under the guidelines, are closely coordinated through the staff director's office to ensure proper use of Commission staff and resources.

The Commission's rejection of the results of one former Commissioner's project involving an approach to sentencing organizational defendants evidences our ability to objectively evaluate the results of each research project.

II. *The GAO attempts to support its statement that the Commission is in "disarray" by claiming that it has missed every deadline for completing its sentence monitoring system.*

This is inaccurate and misleading. Under tremendous time constraints and against formidable odds, the Commission delivered to Congress, on time, an initial set of sentencing guidelines and policy statements. In fact, the Commission has met every statutory deadline for the submission of amendments and reports to the Congress.

What the GAO may have been referring to is a series of self-imposed deadlines set by the Commission. Perhaps we may be chastised for being overly ambitious in setting internal deadlines, but it is completely inaccurate to suggest that the Commission has anything less than a perfect record in meeting all of its statutory deadlines. Indeed, because we set tight internal deadlines, we were able to accomplish every facet of our numerous tasks on time.

III. *The GAO cites vacancies and turnover in key positions as evidence of "organizational disarray" at the Commission.*

The GAO's statement that "[i]n its four years, the Commission has had an equal number of staff directors," while rhetorically impressive, does not paint a complete picture of the situation. One former staff director left the Commission to become a federal district court judge. Another of the "four" is the current staff director, Phyllis Newton, who has been with the Commission since 1986. The current staff director has risen from the ranks and has the full support of the entire Commission.

The Commission is also faulted by the GAO for not hiring a research director during the past 18 months. During this period, the focus of the Commission was directed toward drafting guideline amendments and training thousands of members of the court family. After the first research director left for employment in the private sector, the Commission consciously decided to implement an alternative management structure using two associate research directors. One associate director was responsible for coordinating monitoring and evaluation while the other supervised long-term research. After operating under this structure for 18 months, and upon the recommendation of the associate research directors, the Commission decided to create a management and sub-management structure within the research unit. In this regard, the Commission recently offered the research director position to an experienced and respected professional in the criminal justice field. That individual has accepted the offer and will begin work at the Commission in April.

IV. *The GAO faults the Commission for not developing a "game plan" for guiding its efforts through the post-guideline development period.*

This is incorrect. The Commission has always had its "game plan" in place. A long-term agenda greatly facilitated the work of the Commission in promulgating an initial set of sentencing guidelines, promulgating four sets of amendments, drafting and disseminating for public comment an additional set of proposed amendments, distributing for public comment and hearing draft guidelines for organizational defendants, preparing a supplementary report containing a detailed prison impact study, preparing detailed training materials and conducting nationwide training sessions for more than 5,000 individuals, preparing a preliminary report on statutory maximum penalties, and completing numerous other projects. I expect the future work of the Commission to be accomplished in the same fashion.

Perhaps the Commission can be faulted for not conforming to the GAO's idea of an organizational chart for a typical federal bureaucracy. But it is indisputable that the Commission got the job done and done well. The guidelines are in place, judicial compliance is high, and the Commission is busy refining what was always envisioned as an evolutionary product. If along the way Commissioners deviated from the routine methods of conducting business by rolling up their sleeves and pitching in with staff, so be it -- I would rather be in "disarray" and get the job done well.

It is important to bear in mind that the GAO focused solely on administrative concerns and did not analyze the operation of the guidelines system. Unfortunately, this distinction appears to have become lost in the publicity surrounding the subcommittee's hearing. The Commission is proud of its work and stands ready to defend the substantive merits of the sentencing guidelines. The justice system is acclimating itself to this dramatic change in noteworthy fashion, with judge's sentencing within the appropriate guideline range in more than 81 percent of the cases. Thus, I believe the more important and proper focus is the bottom line results of the Commission's work, of which the early indicators are very positive.

COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES

CIVIL CASES TO TRIAL

QUESTION:

By district, what is the average length of time from when a civil case is filed until the case goes to trial?

ANSWER:

Attached are two tables from the latest Annual Report of the Director of the Administrative Office, which contain data on the median time from filing to disposition for all civil cases closed and the median time from issue (date of response to the complaint) to the date trial began.

TABLE C-5. U.S. DISTRICT COURTS
TIME INTERVALS FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED, BY DISTRICT AND METHOD OF DISPOSITION
(EXCLUDES: LAND CONDEMNATION, PRISONER PETITIONS, AND DEPORTATION REVIEWS
INTERVALS SHOWN ARE FOR THE MEDIAN TIME AND FOR THE RANGE OF THE MIDDLE 80 PERCENT OF THE CASES.)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1989

CIRCUIT AND DISTRICT	TOTAL CASES				NO COURT ACTION				COURT ACTION											
									BEFORE PRETRIAL				DURING OR AFTER PRETRIAL				TRIAL			
	NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*		
		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN
TOTAL...	194,910	2	8	28	58,405	1	6	25	98,306	1	6	23	28,226	6	15	37	9,973	7	18	42
DC.......	3,215	2	8	25	1,227	1	6	20	1,558	2	8	27	238	7	13	27	192	7	18	30
1ST...	7,513	2	10	45	1,647	1	6	33	3,808	2	7	43	1,603	6	17	56	455	8	23	51
ME.......	573	2	8	23	219	2	7	17	220	1	6	16	99	7	13	30	35	12	20	37
MA.......	3,612	2	15	66	1,086	2	9	46	1,603	2	14	66	731	5	23	85	192	10	28	63
NH.......	517	1	9	36	72	1	2	15	191	1	3	11	209	8	18	35	45	7	26	59
RI.......	697	2	10	20	149	1	4	11	155	2	7	19	306	6	11	20	87	7	14	29
PR.......	2,114	1	6	24	121	1	2	9	1,639	1	5	17	258	7	19	41	96	7	21	39
2ND...	17,113	2	10	37	7,508	2	7	34	5,513	2	8	30	3,477	6	17	43	615	8	22	53
CT.......	2,761	2	15	62	1,756	2	15	86	828	2	11	30	51	11	17	38	126	9	23	53
NY,N.....	1,248	3	13	43	304	2	7	33	631	2	10	37	229	13	29	55	84	11	31	53
NY,E.....	4,029	2	10	31	1,253	1	6	19	1,404	2	7	26	1,264	7	17	41	108	10	23	57
NY,S.....	7,580	2	8	34	3,651	2	6	27	2,114	1	7	35	1,590	6	16	39	225	6	19	50
NY,W.....	1,215	2	11	37	398	1	6	24	441	1	10	27	334	6	21	53	42	8	26	54
VT.......	280	2	10	22	144	1	10	20	95	2	7	21	9	-	-	-	30	11	15	22
3RD...	19,036	1	7	27	5,180	2	6	23	9,486	1	6	21	3,292	5	14	36	1,078	6	16	41
DE.......	535	2	12	40	128	1	4	17	309	2	12	39	48	12	19	37	50	2	26	48
NJ.......	5,424	2	9	30	1,632	2	5	17	1,904	1	6	23	1,610	6	16	39	278	5	23	49
PA,E.....	7,993	1	6	20	1,671	2	6	12	4,845	1	5	18	1,008	4	11	29	469	5	13	30
PA,M.....	1,318	1	7	17	69	1	3	18	771	1	5	13	357	5	11	21	121	5	13	30
PA,W.....	2,922	1	8	31	1,255	1	6	29	1,261	1	7	21	258	11	22	45	148	11	28	45
VI.......	844	3	17	37	425	6	23	40	396	1	11	36	11	11	31	45	12	18	25	47

CIRCUIT AND DISTRICT	TOTAL CASES				NO COURT ACTION				COURT ACTION											
									BEFORE PRETRIAL				DURING OR AFTER PRETRIAL				TRIAL			
	NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*		
		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN
4TH...	14,907	2	7	21	4,821	1	5	17	6,841	2	6	19	2,287	5	11	30	958	5	12	33
MD......	3,104	1	7	25	723	1	6	16	1,770	1	6	18	424	5	17	41	187	8	20	43
NC,E....	947	2	6	21	557	1	4	18	322	2	8	19	34	9	20	29	34	7	18	29
NC,M....	820	2	5	19	304	1	4	11	364	2	5	17	123	5	12	23	29	14	21	32
NC,W....	906	1	6	19	396	1	4	12	311	2	7	21	148	4	12	22	51	9	16	33
SC......	3,360	2	6	18	942	1	4	12	1,565	2	6	18	659	5	10	25	194	5	12	32
VA,E....	2,582	1	5	12	1,002	1	4	11	820	1	4	12	435	4	6	12	325	5	7	14
VA,W....	1,349	2	9	30	588	2	9	33	442	2	8	21	242	5	11	32	77	4	14	39
WV,N....	474	2	11	44	139	2	10	26	283	2	10	45	33	4	30	50	19	4	28	57
WV,S....	1,365	2	11	24	170	2	11	26	964	2	10	19	189	11	17	34	42	11	17	26
5TH...	25,534	2	9	32	5,983	2	10	37	14,864	2	7	26	3,208	7	16	37	1,479	7	20	44
LA,E....	4,426	2	8	22	129	1	3	8	2,602	1	6	15	1,299	6	13	29	396	6	16	35
LA,M....	906	2	13	38	46	1	5	47	808	2	12	34	12	6	38	59	40	6	27	55
LA,W....	2,923	3	10	27	903	2	12	26	1,615	3	8	22	243	15	23	33	162	10	24	35
MS,N....	956	2	11	33	315	1	8	29	382	2	8	25	176	10	17	29	83	12	26	48
MS,S....	2,147	2	13	66	1,073	2	13	104	603	2	9	24	344	5	17	35	127	13	20	34
TX,N....	4,470	1	7	28	371	1	11	35	3,894	1	7	25	59	2	21	55	146	11	21	46
TX,E....	1,814	3	13	39	312	2	11	38	1,058	2	10	39	311	8	17	38	133	8	20	40
TX,S....	5,291	2	10	39	1,759	2	11	38	2,637	2	7	30	708	7	21	50	187	9	28	60
TX,W....	2,601	2	8	32	1,075	2	6	26	1,265	1	8	32	56	7	15	33	205	6	17	44
6TH...	20,806	2	9	27	6,196	1	4	21	9,449	2	8	22	4,262	6	13	35	899	9	19	47
KY,E....	1,791	1	8	25	357	1	8	24	1,170	1	7	17	194	9	21	36	70	10	23	44
KY,W....	1,281	2	12	43	164	1	6	24	704	2	8	42	354	8	22	54	59	10	24	48
MI,E....	5,159	2	7	19	1,966	1	3	9	1,135	2	7	15	1,860	5	11	24	198	9	17	41
MI,W....	1,604	2	9	26	368	1	5	22	1,076	2	9	25	126	9	20	35	34	10	28	48
OH,N....	4,711	2	11	27	1,106	1	5	28	2,504	2	11	19	968	5	14	40	133	7	17	51
OH,S....	2,564	2	10	31	1,005	1	5	23	1,116	2	10	24	353	8	20	50	90	10	25	63
TN,E....	1,691	2	9	24	346	1	5	24	824	1	6	21	337	6	13	23	184	7	16	29
TN,M....	1,022	1	7	21	377	1	8	18	542	1	6	19	32	8	13	26	71	7	17	41
TN,W....	983	1	10	43	507	1	8	30	378	1	9	37	38	10	31	66	60	15	36	67

CIRCUIT AND DISTRICT	TOTAL CASES				NO COURT ACTION				COURT ACTION											
									BEFORE PRETRIAL				DURING OR AFTER PRETRIAL				TRIAL			
	NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*		
		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN
7TH...	16,934	1	5	25	3,986	1	4	21	9,977	1	4	17	2,391	4	15	41	582	7	22	45
IL,N....	9,632	1	4	19	2,457	1	3	14	5,816	1	3	13	1,106	3	11	37	253	6	23	52
IL,C....	1,025	2	9	27	212	1	9	27	663	2	8	21	118	7	21	38	32	6	22	44
IL,S....	808	2	11	34	192	2	9	30	487	2	9	27	78	13	28	39	51	11	25	40
IN,N....	1,712	2	8	32	144	1	5	25	1,017	2	6	21	463	7	16	42	88	5	19	39
IN,S....	1,894	2	12	39	257	4	23	44	1,218	2	7	23	359	13	28	60	60	15	30	51
WI,E....	1,158	1	7	22	606	1	7	22	457	1	5	17	41	11	20	41	54	9	20	41
WI,W....	707	1	4	11	118	1	2	4	319	1	3	7	226	4	7	14	44	4	9	16
8TH...	12,524	2	9	25	4,224	1	7	23	6,181	2	7	19	1,354	9	18	35	765	8	17	36
AR,E....	1,698	2	8	21	491	2	10	22	1,051	2	6	18	25	4	18	29	131	8	16	31
AR,W....	929	2	7	15	115	2	8	16	718	1	7	15	8	-	-	-	88	6	11	20
IA,N....	634	2	10	29	147	1	8	25	440	3	10	26	19	12	25	41	28	2	28	57
IA,S....	1,048	2	12	31	250	1	5	24	500	2	9	22	234	10	22	38	64	13	23	42
MN......	1,966	1	8	24	667	1	3	11	619	2	6	15	624	8	16	32	56	13	22	41
MO,E....	2,177	2	9	24	1,022	2	7	21	853	2	9	22	128	6	15	40	174	9	16	36
MO,W....	1,735	2	9	27	673	2	9	28	886	2	7	19	92	8	19	38	84	8	19	32
NE......	1,360	2	11	29	424	1	11	32	754	1	8	23	104	12	20	35	78	10	19	32
ND......	529	1	5	30	253	1	3	19	173	1	4	28	84	11	23	37	19	2	29	50
SD......	448	1	8	23	182	1	7	19	187	1	6	18	36	11	18	32	43	7	14	27
9TH...	29,832	2	7	28	11,139	1	5	25	15,382	2	7	24	2,034	9	17	36	1,277	9	20	44
AK......	593	3	13	39	290	4	13	37	278	3	11	38	13	5	16	47	12	17	35	79
AZ......	1,890	1	6	25	732	1	3	16	1,104	2	8	27	17	12	22	26	37	14	32	43
CA,N....	5,411	2	5	25	3,345	2	5	23	1,866	2	8	25	100	10	36	38	100	11	21	47
CA,E....	1,841	2	9	29	625	2	7	26	963	2	7	22	216	8	19	55	37	10	29	54
CA,C....	9,379	1	6	19	2,384	1	3	12	5,346	1	5	15	968	9	15	29	681	9	19	43
CA,S....	1,922	2	11	40	437	1	5	37	1,405	3	12	37	24	11	32	48	56	10	30	68
HI......	1,341	3	15	44	990	3	15	44	269	2	14	53	49	9	15	39	33	10	22	76
ID......	559	2	9	27	53	1	3	8	372	2	7	20	113	9	21	42	21	9	25	78
MT......	981	3	13	33	302	2	7	30	331	2	10	29	309	8	17	35	39	10	28	45
NV......	1,305	2	8	32	200	1	5	16	975	2	8	30	70	11	23	43	60	12	28	56
OR......	1,734	2	7	19	779	2	7	17	832	2	6	18	37	7	17	25	86	8	14	26
WA,E....	659	2	10	34	343	2	10	37	210	2	7	18	77	8	13	29	29	8	24	40
WA,W....	2,091	2	8	25	610	1	7	23	1,359	2	8	24	39	8	15	25	83	11	20	33
GUAM....	79	1	8	17	40	1	4	19	35	3	9	15	1	-	-	-	3	-	-	-
NMI.....	47	3	9	22	9	-	-	-	37	3	8	21	1	-	-	-	-	-	-	-

CIRCUIT AND DISTRICT	TOTAL CASES				NO COURT ACTION				COURT ACTION											
									BEFORE PRETRIAL				DURING OR AFTER PRETRIAL				TRIAL			
	NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*			NUMBER OF CASES	TIME INTERVALS IN MONTHS*		
		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN
10TH..	10,746	2	8	26	2,060	1	6	19	5,209	1	6	21	2,897	5	12	31	580	8	18	42
CO.......	1,947	1	7	28	27	1	1	4	982	1	4	15	840	5	12	33	98	11	24	59
KS.......	1,889	2	10	33	717	2	8	25	755	2	6	18	311	12	22	47	106	14	26	48
NM.......	1,342	2	9	28	305	1	6	23	729	2	8	28	221	7	14	27	87	5	19	32
OK,N....	1,138	2	8	22	197	1	6	17	749	2	7	18	134	8	15	29	58	8	19	38
OK,E....	627	1	5	10	198	1	4	8	290	1	4	10	101	6	8	16	38	8	10	17
OK,W....	2,307	1	7	19	453	1	4	13	643	1	4	11	1,094	5	9	21	117	6	13	23
UT.......	1,104	2	10	32	14	1	2	6	946	2	9	29	99	11	20	46	45	16	25	46
WY.......	392	2	7	16	149	1	6	10	115	2	7	17	97	5	9	19	31	7	9	16
11TH..	16,748	1	7	22	4,434	1	6	20	10,038	1	6	20	1,183	6	13	29	1,093	8	16	33
AL,N....	2,326	1	5	15	205	1	6	13	1,630	1	4	11	316	5	11	22	175	6	11	22
AL,M....	817	1	6	15	58	1	2	3	557	1	4	14	92	6	9	16	110	7	11	25
AL,S....	974	2	9	23	304	1	5	16	348	1	7	19	194	8	15	32	128	9	16	29
FL,N....	851	2	6	23	165	1	4	20	598	1	6	17	37	12	19	31	51	10	20	36
FL,M....	3,553	2	7	25	484	1	4	15	2,772	2	6	23	120	9	17	34	177	11	20	40
FL,S....	3,610	1	7	22	897	1	7	21	2,341	1	6	19	194	4	14	32	178	8	20	34
GA,N....	2,841	2	8	25	1,719	2	7	23	893	2	9	26	47	6	11	20	182	10	21	34
GA,M....	756	2	10	34	250	1	5	21	404	2	11	36	58	11	23	44	44	8	20	40
GA,S....	1,020	2	8	18	352	2	6	19	495	2	7	16	125	7	11	20	48	6	11	23

* TIME INTERVAL COMPUTED ONLY WHERE THERE ARE 10 OR MORE CASES

TABLE C 10. U.S. DISTRICT COURTS
TIME INTERVALS FROM ISSUE TO TRIAL OF CIVIL CASES IN WHICH A TRIAL WAS COMPLETED, BY DISTRICT DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1989

CIRCUIT AND DISTRICT	TOTAL TRIALS				NONJURY TRIALS				JURY TRIALS			
	NUMBER OF TRIALS	TIME INTERVAL IN MONTHS*			NUMBER OF TRIALS	TIME INTERVAL IN MONTHS*			NUMBER OF TRIALS	TIME INTERVAL IN MONTHS*		
		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN		10 PERCENT LESS THAN	MEDIAN	10 PERCENT MORE THAN
TOTAL...	8,740	4	14	36	3,768	2	13	36	4,972	5	14	36
DC......	152	4	12	32	80	3	12	30	72	5	12	33
1ST...	408	5	16	43	156	2	16	47	252	6	16	41
ME......	26	8	16	24	14	8	16	24	12	6	15	23
MA......	196	5	19	52	72	2	19	52	124	7	19	54
NH......	29	11	24	34	9	-	-	-	20	2	22	39
RI......	90	6	11	20	31	3	10	23	59	7	12	19
PR......	67	2	13	32	30	1	12	32	37	4	13	32
2ND...	763	1	18	46	342	1	16	45	421	5	19	47
CT......	118	5	20	50	39	6	18	50	79	4	20	50
NY,N....	71	11	28	45	20	2	26	45	51	12	30	45
NY,E....	166	1	16	43	83	1	15	45	83	1	19	43
NY,S....	359	1	16	44	179	1	15	44	180	5	17	44
NY,W....	26	6	26	78	11	5	28	85	15	6	25	78
VT......	23	8	13	28	10	3	12	22	13	9	14	28
3RD...	995	5	15	39	346	4	14	40	649	6	15	39
DE......	37	8	24	46	18	5	24	56	19	9	17	39
NJ......	209	8	26	51	79	5	21	48	130	10	29	51
PA,E....	491	4	11	27	156	4	10	27	335	4	12	27
PA,M....	93	3	11	34	20	1	9	47	73	3	11	29
PA,W....	140	7	20	43	64	1	17	45	76	11	22	43
VI......	25	10	21	58	9	-	-	-	16	17	21	47
4TH...	855	2	8	24	343	1	6	21	512	3	9	27
MD......	161	1	13	29	64	1	11	25	97	1	14	30
NC,E....	25	10	17	29	12	7	12	18	13	10	17	29
NC,M....	30	1	14	26	12	1	10	16	18	12	19	28
NC,W....	52	1	12	21	19	1	8	15	33	6	13	22
SC......	199	2	8	19	54	1	11	23	145	2	8	15
VA,E....	259	2	5	7	150	1	5	7	109	2	5	7
VA,W....	71	3	13	39	22	3	16	37	49	4	12	39
WV,N....	22	3	20	49	4	-	-	-	18	5	20	49
WV,S....	36	3	14	19	6	-	-	-	30	3	14	27
5TH...	1,285	4	15	35	602	1	15	33	683	5	15	35
LA,E....	309	5	11	26	131	3	10	25	178	6	12	26
LA,M....	44	13	24	48	24	1	24	48	20	14	24	53
LA,W....	129	8	18	28	70	7	17	29	59	8	19	28
MS,N....	65	10	19	43	23	1	19	31	42	10	19	47
MS,S....	111	6	14	24	40	5	12	21	71	7	13	24
TX,N....	135	7	18	33	73	8	20	33	62	6	15	30
TX,E....	130	1	10	28	39	1	8	19	91	1	11	28
TX,S....	174	6	24	53	99	5	22	49	75	10	27	56
TX,W....	188	1	11	34	103	1	8	31	85	2	13	37
6TH...	778	6	15	38	297	4	15	43	481	6	16	35
KY,E....	57	11	20	36	14	9	22	39	43	11	19	35
KY,W....	55	9	19	38	22	11	17	34	33	6	19	38
MI,E....	230	8	16	38	76	6	14	42	154	9	16	35
MI,W....	34	1	12	37	16	1	8	43	18	2	14	34
OH,N....	128	3	11	41	53	2	12	52	75	4	11	39
OH,S....	62	8	22	49	19	4	22	60	43	8	22	37
TN,E....	111	4	12	23	42	1	10	22	69	5	12	23
TN,M....	52	4	11	30	24	3	8	20	28	5	13	35
TN,W....	49	11	23	44	31	11	23	52	18	10	23	30

TABLE C 10. U.S. DISTRICT COURTS
TIME INTERVALS FROM ISSUE TO TRIAL OF CIVIL CASES IN WHICH A TRIAL WAS COMPLETED, BY DISTRICT DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1989

CIRCUIT AND DISTRICT	TOTAL TRIALS				NONJURY TRIALS				JURY TRIALS			
	NUMBER OF TRIALS	TIME INTERVAL IN MONTHS*			NUMBER OF TRIALS	TIME INTERVAL IN MONTHS*			NUMBER OF TRIALS	TIME INTERVAL IN MONTHS*		
		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN		10 PER-CENT LESS THAN	ME-DIAN	10 PER-CENT MORE THAN
7TH...	480	2	15	44	208	2	14	45	272	3	16	43
IL,N....	212	1	15	46	98	1	13	46	114	1	16	45
IL,C....	33	2	19	46	12	1	15	39	21	2	20	48
IL,S....	32	6	15	31	7	-	-	-	25	6	13	31
IN,N....	51	1	15	32	21	1	20	33	30	1	14	26
IN,S....	60	2	21	51	32	1	18	51	28	12	22	48
WI,E....	47	9	19	42	19	7	18	29	28	10	21	42
WI,W....	45	3	7	15	19	5	7	13	26	3	7	15
8TH...	684	3	13	30	279	3	12	30	405	4	13	29
AR,E....	113	2	12	24	53	1	10	23	60	2	13	24
AR,W....	83	1	9	15	29	1	9	16	54	1	8	15
IA,N....	17	14	31	45	5	-	-	-	12	5	29	47
IA,S....	39	1	14	26	18	1	14	26	21	1	13	35
MN......	65	9	20	40	27	3	17	38	38	13	20	43
MO,E....	148	4	10	23	60	4	9	25	88	4	10	22
MO,W....	94	4	16	28	34	7	18	28	60	2	13	27
NE......	69	7	17	32	34	1	17	36	35	9	17	29
ND......	11	1	23	40	3	-	-	-	8	-	-	-
SD......	45	5	12	26	16	1	11	26	29	8	12	25
9TH...	837	1	13	35	507	1	12	33	330	1	13	37
AK......	10	9	16	30	5	-	-	-	5	-	-	-
AZ......	35	6	23	37	19	1	21	33	16	8	24	35
CA,N....	93	4	14	38	55	4	14	37	38	5	16	41
CA,E....	37	5	22	49	20	5	22	37	17	1	20	57
CA,C....	274	1	12	19	159	1	12	19	115	1	13	19
CA,S....	56	8	18	39	36	7	15	35	20	11	24	43
HI......	50	1	11	40	33	4	11	51	17	1	13	32
ID......	16	3	21	60	7	-	-	-	9	-	-	-
MT......	25	6	22	35	10	1	8	19	15	14	24	35
NV......	55	7	19	54	38	7	18	43	17	6	19	55
OR......	57	1	10	32	35	1	10	52	22	1	11	23
WA,E....	30	1	9	26	24	1	9	25	6	-	-	-
WA,W....	96	3	16	36	63	1	15	37	33	7	18	36
GUAM....	3	-	-	-	3	-	-	-	-	-	-	-
NMI.....	-	-	-	-	-	-	-	-	-	-	-	-
10TH..	562	6	13	33	203	5	13	35	359	6	13	32
CO......	110	6	20	40	52	3	17	40	58	6	20	37
KS......	99	8	20	39	38	6	18	39	61	10	21	39
NM......	89	5	14	25	39	5	12	20	50	4	14	27
OK,N....	51	5	12	25	13	1	9	17	38	6	13	26
OK,E....	28	4	8	10	3	-	-	-	25	6	8	10
OK,W....	106	6	10	20	19	5	9	18	87	6	10	20
UT......	43	9	19	36	26	9	16	28	17	13	22	36
WY......	36	2	7	17	13	1	8	24	23	2	7	17
11TH..	941	4	12	30	405	3	11	31	536	4	13	29
AL,N....	175	3	9	18	71	3	7	15	104	2	9	19
AL,M....	56	1	7	14	25	2	9	40	31	1	6	10
AL,S....	67	6	13	28	23	4	14	30	44	4	12	25
FL,N....	43	7	15	28	20	5	14	21	23	7	15	32
FL,M....	175	6	16	37	90	4	16	41	85	6	17	35
FL,S....	185	1	11	27	112	1	10	26	73	1	12	29
GA,N....	152	8	18	35	42	1	15	36	110	10	18	32
GA,M....	41	8	18	36	9	-	-	-	32	8	20	42
GA,S....	47	5	9	20	13	1	7	20	34	5	10	19

NOTE: INCLUDES TRIALS CONDUCTED BY DISTRICT AND APPELLATE JUDGES ONLY.
ALL TRIALS CONDUCTED BY MAGISTRATES ARE EXCLUDED.
EXCLUDES THE FOLLOWING TRIALS: LAND CONDEMNATION, FORFEITURES AND PENALTY CASES, PRISONER PETITIONS (HABEAS CORPUS, MOTIONS TO VACATE SENTENCE UNDER 28 U.S.C. 2255, HEARINGS ON EVIDENTIARY MATTERS), BANKRUPTCY PETITIONS, AND THREE JUDGE COURT CASES.

* TIME INTERVALS COMPUTED ONLY WHERE THERE ARE 10 OR MORE TRIALS.

PERCENT CIVIL CASES ARE DIVERSITY CASES

QUESTION:

Currently, what percent of civil cases are diversity cases?

ANSWER:

During the year ended June 30, 1989, nearly 29 percent of all civil filings were diversity cases. That percentage is falling slightly this year because of the change in the jurisdictional dollar amount for filing diversity cases from $10,000 to $50,000, which became effective in May 1989. During the year ended December 31, 1989, diversity cases represented 27 percent of all civil filings.

HOME CONFINEMENT/ELECTRONIC MONITORING

QUESTION:

Briefly, please explain home confinement/electronic monitoring. In your response describe the method for monitoring an individual if he/she has, for example, a doctor's appointment?

ANSWER:

Authorized by the 1988 Anti-Drug Abuse Act (§7305) as a sentencing alternative for convicted Federal offenders, home confinement requires an individual to remain at home except when engaged in approved activities (e.g., employment, medical or substance abuse treatment, etc.). Home confinement includes offenders wearing electronic transmitters which signal all departures from, arrivals to, and attempts to remove or tamper with the transmitter.

Individuals are monitored either electronically or by probation/pretrial staff randomly contacting the home to verify the individual's presence at home. The electronic radio frequency transmitters signaled by a central computer, are the size of a bar of soap, and are attached to the individual's ankle or wrist. The central computer is programmed with the individual's schedule which has been approved by the probation/pretrial staff. Any deviation from the approved schedule is reported by the monitoring staff to the probation/pretrial staff. Unauthorized absences from the home can and usually do result in the individual being placed in a correctional institution.

If an individual is given permission to leave home for such appointments as those with a doctor the times away from home are defined and verification of the doctors appointment will occur.

FEDERAL TRADE COMMISSION

STATEMENT OF JANET D. STEIGER, CHAIRMAN

ACCOMPANIED BY:

ROBERT WALTON, EXECUTIVE DIRECTOR

RICHARD ARNOLD, DIRECTOR, BUDGET AND FINANCE

PREPARED STATEMENT

Senator BUMPERS. The subcommittee now will consider the Federal Trade Commission's budget. Are you Ms. Steiger?

Ms. STEIGER. Yes, I am.

Senator BUMPERS. The Commission is budgeting a total of $76,990,000 for 1991, consisting of $56,990,000 in appropriations and $20 million from the premerger filing fees we authorized last year. The budgeted level provides for a total of 970 work-years, an increase of 20 over the current level.

Ms. Steiger, we are very honored to have you with us this morning to present your budget. You can just extemporize on your statement. Your statement in full will be inserted in the record.

[The statement follows:]

STATEMENT OF JANET D. STEIGER

Mr. Chairman and members of the subcommittee: I am pleased to appear before you today to discuss the Federal Trade Commission's fiscal 1991 budget request and to answer your questions.

Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. With the resources requested in this budget, the Federal Trade Commission can continue to meet this important responsibility.

AGENCY REQUEST

The Commission's proposed budget for fiscal 1991 requests $76,990,000 and 970 work-years. This funding level is 5 percent higher than the agency's fiscal 1990 program level of $73,616,000, and 20 work-years greater than the 950 work-years planned in fiscal 1990. This $3,374,000 increase between fiscal 1990 and 1991 will fund the 20 work-year increase, annualized pay and retirement cost increases, and other inflationary cost increases over which the agency has no control. Of the $3,374,000 increase, $3,114,000 is related to direct budget authority and $260,000 is related to fee income. The increase in fees is to restore the fiscal 1990 sequestration reduction only; it is not an increase in the authorized fee level.

The Commission sustained a nearly 50 percent reduction in work-years during the past decade and has determined that this reduced level is insufficient adequately to perform our mandated activities. With the revised funding provided by the Congress in the fiscal 1990 appropriation, the Commission is able for the first time in 10 years to stop its resource decline and provide for a small increase. In fiscal 1991, we are requesting what we consider to be the minimum necessary increase in resources to continue to restore the Commission to an appropriate enforcement level. This funding level will provide for the increase in work-years needed to keep pace with the growth in antitrust related activity and in consumer injury resulting from such activity as telemarketing fraud and unfair or deceptive advertising and marketing practices.

IMPACT OF FUNDING CHANGE

Beginning with the fiscal 1990 appropriation, Commission funding consists of direct budget authority and fee income charged for Hart-Scott-Rodino pre-merger filings. Fully 26 percent of our funding, or $20 million, is now represented by fee income. The fiscal 1991 program level of $76,990,000 assumes full collection of the $20 million. Thus, the Commission is now dependent on all the $20 million fee income to maintain the critical antitrust program levels described in this budget request.

Uncertainty in fee collections resulting from a continuing drop in filing fees, such as we are experiencing this year, makes the planning and management of Commission resources and programs extremely difficult. Absent both certainty and stability in funding, some of the policy and program initiatives described below may need to be diminished or altogether deferred.

FISCAL 1990 FUNDING STATUS

The fee income component of the 1990 program level is $19,740,000 or about 27 percent of our total required program level. Due to the late start of the fee and a downturn in merger transactions, we will not collect the full amount in fiscal 1990.

POLICY INITIATIVES

As Chairman, I am committed to several policy goals. First, I believe we should continue and increase public confidence in the Federal Trade Commission as a vigorous law enforcement agency. One step in this direction is to halt the decline in resources at the Commission. The work of the Appropriations Committee in providing us an increase in our fiscal 1990 funding, the first in 10 years, is greatly appreciated.

Second, I have asked staff to increase their vigilance and to recommend ways to streamline and improve the review of proposed mergers. The Commission also has a unique role in civil, nonmerger antitrust enforcement, and this too is also undergoing review. Expansion of our nonmerger enforcement activities is important to help build our credibility and thereby enhance the deterrent effects of our actions. This expansion also will help ensure that we do not overlook anticompetitive conduct that should be challenged or insufficiently support our existing cases.

Third, I am working to eliminate any confrontational attitude toward constituencies concerned with the work of the FTC, including Congress, the states, the legal community, and public interest groups. To attain this goal, the Commission has embarked on a program of increased communications with consumers, businesses, and regulators. We have held a number of meetings with consumer groups and business leaders to discuss consumer and antitrust concerns. We are working very hard to develop a productive working relationship with State Attorneys General and local regulatory officials. The results of these efforts will help guide the development of Commission enforcement policies in the future.

PROGRAMS

As in prior years, resources for fiscal 1991 will be directed against business practices that harm competition and injure consumers. In fiscal 1991, the Commission will continue to work directly with the business community to achieve voluntary compliance through education and articulation of policy. A case-by-case enforcement approach coupled with advisory efforts will continue to be the Commission's primary method of enforcing the law.

The Commission's fiscal 1991 budget requests funding, almost equally divided, for the agency's two missions as follows: Maintaining competition—$37.3 million and 465 work-years; and consumer protection—$39.7 million and 505 work-years.

Maintaining competition mission.—The maintaining competition mission budget for fiscal 1991 requests an increase of 8 work-years from fiscal 1990. All of the $20 million projected for fee collection is used to support this mission and any shortfall in fee collections reduces our ability to conduct antitrust enforcement.

Among other things, the $37.3 million and 465 work-years allocated to the maintaining competition mission will permit the Commission to:

One, challenge anticompetitive mergers that could lead to higher prices, restricted output, diminished innovation, or other harms to consumers. We have seen a substantial rise in merger activity over the last decade while our staff has declined, and even at this increased request level, the staff will continue to be stretched thin.

Two, investigate alleged restrictions on competition in the delivery of health care services and other licensed occupations. Health care services, a major sector of the economy, have been characterized for many years by rapidly rising prices.

Three, continue our emphasis on finding and eliminating restraints among direct competitors that raise or maintain prices above competitive levels or otherwise harm consumers.

Four, assure compliance with all outstanding Commission orders while also reviewing selected orders to ensure they still promote the procompetitive environment that is the central goal of the Commission's legal mandates.

Five, render advisory opinions, to increase conformance by business with the laws we enforce.

Six, respond to requests from Congress, other legislative bodies and federal and state regulators for our assessment of the competitive effects of proposed legislation, regulations or policies.

Consumer protection mission.—The consumer protection mission for fiscal 1991 requests an increase of 12 work-years from fiscal 1990. The $39.7 million and 505 work-years proposed for this mission will permit the Commission to:

One, target areas where there is substantial consumer injury—particularly in cases involving fraud, deceptive sales or marketing practices, false or deceptive advertising, and credit law. Telemarketing fraud and deceptive advertising are areas of consumer injury that have seen tremendous growth.

Two, respond to requests from state and federal agencies to analyze the possible effects of their regulations and proposals on consumers, and within the legal constraints designed to protect business confidentiality to share information necessary for effective law enforcement.

Three, work aggressively to educate consumers of their rights and businesses of their responsibilities under the Commission's consumer protection trade regulation rules and adjudicative orders.

Four, monitor compliance with existing rules and orders, litigating where necessary to ensure compliance.

MANAGEMENT INITIATIVE

The agency's major management initiative for both fiscal 1990 and 1991 will be to focus on ways to improve staff productivity through the increased use of modern information systems technology. Over the past 5 years, the FTC has developed and put in place a comprehensive infrastructure of systems to meet basic office automation, voice, and data communications, and central computing needs of the Commission and its staff. The potential productivity contribution of these systems remains to be fully realized, however, and for this reason, the first order of business now is to assure that these systems are maintained and used effectively. To tap this potential, the Commission has acted to partially restore recent cuts in our capital equipment budget. The fiscal 1991 budget also provides an increase of 2 work-years to support our information systems base.

AUTHORIZATION

As you know, the Commission has operated since fiscal 1983 without authorization legislation. The appropriation language for the Commission has continued several provisions of the expired authorization bill. We request each year, including this year, that these provisions be deleted because time and practice have made them moot, but also because we hope it would encourage the enactment of an authorization bill.

At present, the Senate has passed a bill (S. 1249); the House has not. I know your committee has supported us in our efforts to secure authorization. The Commission is committed to this effort.

Mr. Chairman and members of the subcommittee, I believe that our fiscal 1991 budget submission makes it clear that the Commission is determined to carry out effectively all its statutory mandates using only the necessary level of resources. That concludes my prepared remarks. I would be happy to respond to your questions.

INTRODUCTION OF ASSOCIATES

Ms. **Steiger**. Thank you, we are delighted to be here to discuss the Commission's fiscal 1991 budget, and we will make our comments brief so that we can answer questions. With me are Robert

Walton, who is our Executive Director, and Richard Arnold, who is our Director of Budget and Finance.

FTC GOALS

I would only comment that I am committed, as Chairman, to several goals for the FTC. The first is to increase confidence in this agency as a diligent and judicious law enforcement agency. Second, we have asked the staff to be especially vigorous in looking at ways to streamline and improve our review of proposed mergers and our civil nonmerger antitrust enforcement.

Third, we have been working very hard in the past several months to eliminate the appearance of any confrontational attitude that this agency was perceived to have toward various constituencies including the Congress, the States' Attorneys General, and other enforcement agencies. We have met with a wide variety of public interest groups and a large segment of the business community, in this effort to improve our cooperation and communication and enforcement efforts.

AGENCY ACTIVITIES

To highlight a few of the rather exciting things that have been going on at the agency since we last discussed the budget, we were part of a joint Postal Service/FTC effort to shut down six telemarketing firms that were using fraudulent promotions.

We have joined with the States' Attorneys General, about nine, looking at the total area of environmental claims on biodegradability. We have initiated already 10 enforcement actions on mergers. That compares to 14 in total during the past fiscal year, 1989. We are continuing to pursue potentially collusive and other anticompetitive or illegal activities by legitimate organizations, such as trade associations, particularly in the health care professions.

FEE INCOME

My most serious news this morning, I think, is the fee income, and there is both good and bad news. The good news is that thanks to this committee and its efforts, we have been able to enjoy the first possible budget increase in over a decade.

Senator BUMPERS. How are those fees running, Ms. Steiger?

Ms. STEIGER. That is the bad news. I will say thank you first, and then get to the bad news.

The bad news is there is a big shortfall. It is creating a roller coaster effect of uncertainty as to the budget level on a month-to-month basis. Filings are roughly 13 percent below the filings of last year. This shortfall, given the fact that some 26 percent of our total budget now comes from filing fees, is a matter of serious concern to us. It could short-circuit the efforts we are making in growth and more important, it could force us to contract.

We are looking for some assistance in lessening the uncertainty of this fee income down the road. In round numbers, we are looking at a 13-percent shortfall in total filings through March of this year. I would anticipate that rather than collecting the full $20 million, if you adjust for seasonal variation and shortages as well, we might be looking at $14,500,000; in the best case, $15 million.

I hedge on all of these predictions because there is simply no way we can know how many filings and fees will occur in a given month. Extrapolating, we could expect filings and fees to total $17 million in fiscal 1991. This, in turn, would be a shortfall of some $3 million from the congressional budget for us.

So that is the problem. Again, our thanks for your help.

SUPPLEMENTAL

Senator **Bumpers**. We are putting $2.5 million in the supplemental to cover your shortfall——

Ms. **Steiger**. Yes, sir.

Senator **Bumpers** [continuing]. On the merger fees.

WORK-YEAR LEVELS

Let's see. FTC's work-years fell over a 10-year period from 1,746 in 1979 to 894 in 1989, almost one-half. In 1990 they rebounded to 950, and now 20 more are requested for 1991.

What is the optimum number we should be shooting for?

Ms. **Steiger**. I think the common wisdom is that 1,700 was probably too large. With improvements in automation and increased productivity, we probably would agree that 1,700 was too high.

What is the magic number? I don't know if there is one. I have heard that former commissioners and chairmen suggest somewhere around the level of 1,000 to 1,100. At this point in time, we are moving very cautiously. We want to be sure, Senator, that we can use the talent that we bring on board; that we are ready to meld them effectively into our work force, and so we are moving at what I think is a very deliberate and cautious pace. Certainly, 970 is needed for 1991. We are stretched very thinly in the merger area. We are borrowing talent. I hasten to add that we are completing our mission. We are doing the job, but it leaves us very little room for nonmerger enforcement activity.

We certainly need an increase in our efforts in consumer effectiveness, especially with telemarketing fraud, which is just growing in leaps and bounds.

PREMERGER FILINGS

Senator **Bumpers**. In just sheer numbers, how many premerger filings have you had this year?

Ms. **Steiger**. The total number last year was 2,883.

So far this year, 1,406 total filings and 689 fee filings, and that will comport to roughly 13 percent fewer than last year's total filings.

Senator **Bumpers**. At what point are those filings made, as far as the company who files them? At what point?

Ms. **Steiger**. When they are ready to have a merger review, these are filed. Nothing happens until these are filed, and now nothing happens until the fee is paid.

Senator **Bumpers**. I used to have a law professor who said, "I am going to give you one piece of advice at the end of this course. If you don't remember anything else I tell you, be sure and remember this: Bill them while the tears are falling." [Laughter.]

Ms. **Steiger**. I am told our premerger filing office does that very effectively. We have extra Kleenex in the lobby.

TELEMARKETING FRAUD

Senator **Bumpers**. On this telemarketing fraud, what is the typical kind of fraud they engage in? Is it just hyping a product? Are we talking about these television kinds of——

Ms. **Steiger**. To be specific on the telemarketing, first of all, the mind of man knows no limits, we will stamp one out and there will be 1,000 more like it coming.

Telemarketing fraud basically, and I say this at the beginning—I have said it publicly and will continue to say it—is not going to be cured by the FTC; it needs law enforcement. We hope to see the States doing more in this regard, but we realize everybody's resources are stretched, and we do have a powerful tool in our 13(b). We can go and get a cease and desist order. We can stop the activity. In some instances, we can get consumer redress. So we are important. We are particularly important because we can cross the lines; we can do it on a national level.

What is going on? Well, they will sell you gold in the ground. They will sell you water purifiers and tell you that the Government is going to make you have one in your home. They will sell you Dali prints. They will do all of this on the phone.

Senator **Bumpers**. There is no diminution of that.

Ms. **Steiger**. It is growing.

Senator **Bumpers**. Our house has gotten to the point where we do not answer the phone at night. We just wait for them to leave a message, and if it is somebody we want to talk to, we call back.

Ms. **Steiger**. Consumer injury is conservatively estimated to be $1 billion a year, and I think that is very low. I think an awful lot of consumers are embarrassed. It is way low. It is just a burgeoning area and one in which the States and we are trying very hard to cooperate and improve things.

We have established a couple of task forces that are rather successful, one of them in the California area, bringing a whole group of law enforcement agents in, and where the fraud is rampant, that is where you have to go.

AIRPORT CONTROL TOWER STUDY

Senator **Bumpers**. In 1989, the FTC studied airport control tower privatization, right?

Ms. **Steiger**. I believe a study was attempted, but it was never finished.

Senator **Bumpers**. We have got the GAO, the Grace Commission, OMB, and everybody else studying that. Why does the FTC feel compelled to get into it?

Ms. **Steiger**. I don't know what decision was taken at that time. We do always maintain an interest in certain economic studies and may have, over the years, studied a variety of things including deregulation, tariffs, and so forth. That particular study did not turn out to be a success. The data were not, as I understand it, available or adequate, and we could not seem to construct a model. So that is dormant. It never did come to pass.

Senator **Bumpers**. It never got off the ground?

Ms. **Steiger**. They could not put together enough to come up with anything. That is pure economic research, not surprisingly. It happens.

JAPANESE AUTO PARTS STUDY

Senator **Bumpers**. Senators Danforth and Bryan joined Senator Hollings in requesting a section VI investigation of Japanese auto parts. Have you done anything on that?

Ms. **Steiger**. We are going to testify on Thursday in the House, and we are responding to the joint requests by the Senators by letter. I believe the Commission is signing off on a description of what it is we think we can do, and we do want to try and be of assistance. It is an enormous field, but we have been talking with staff of both the Senate committee and the House committee.

Senator **Bumpers**. But you are not underway with such an investigation; is that what you are saying?

Ms. **Steiger**. Not yet. But we do have a plan for how we are going to proceed and we will present that.

Senator **Bumpers**. This just happened on March 28 of this year. So in all fairness, you really have not had a chance to gear up, but I can tell you that Senator Hollings feels strongly about that, and I think I do, too. I don't know that much about it, but I have heard so many comments about how the Japanese eat our lunch on automobile parts. I am really anxious for you to get going on that. I am anxious to see what the results of that investigation are.

Ms. **Steiger**. We are trying to be responsive. We have been using the time, by the way, in conferring with the staffs to see if we can develop a plan that we felt at least indicated what it was that we could do. It is a massive area, as you know, Senator.

Senator **Bumpers**. I have got two or three more questions that I probably will submit for the record. Senator Rudman.

ENFORCEMENT OF RESALE PRICE MAINTENANCE PROHIBITION

Senator **Rudman**. I just have a couple or so for the record. I notice that in your budget justification in the area of resale price maintenance, you talk about investigating and prosecuting suspected anticompetitive resale price discrimination and nonprice discrimination.

I also notice, somewhat to my disappointment, that three of your five commissioners have agreed to a letter in opposition to legislation that is presently pending which I am the principal author of.

I disagree with your analysis. Be that as it may, I notice that you also say that you will enforce the prohibition against resale price maintenance, whether it is a product of judicial doctrine or of legislation. I assume you mean that.

Ms. **Steiger**. Yes, sir; it is the law.

Senator **Rudman**. I expect we are going to have some change in that. I think it is one of the most neglected areas in the area of consumer protection for the last 8 years, and I hope that somehow, we can reach a position of changing that.

I can tell you horror stories case by case that involve resale and price maintenance of the worst kind that are not being touched at all, and the people who are paying for it are American consumers, plain and simple; just the kind of thing the FTC was designed to prevent.

ADVERTISING PRACTICES

On advertising practices, you say that of the 20 new work-years, 4 will be allocated for the advertising practices program; in particular you are looking at health claims for food and drug products, cosmetic advertising, and safety claims. Could you tell us specifically what you are going to be looking at?

Ms. Steiger. One of the areas that we are taking a rather large look at right now in the health care area is a look at the entire world of diet claims, diet plans, and diet clinics. As you know, we have been involved in investigating fraudulent diet schemes since 1926. We have brought many cases. It remains remarkably resilient.

We are looking to see if, indeed, of any of these plans, the new products are being deceptively advertised. We think it is an important area. Consumers are reportedly going to spend up to $50 billion a year on this.

Senator Rudman. How much?

Ms. Steiger. Fifty billion dollars, I believe, by 1995. It is growing; they are spending about $30 billion now. It is a very big field for the consumer.

HEALTH CARE

Senator Rudman. On your horizontal restraints program—it sounds like some kind of a seat belt you put in a car—but at any rate, that has to do with price collusion and so forth amongst competitors. I understand you are looking at the health care industry in particular; is that right?

Ms. Steiger. Yes, sir; we have been active in the health care field for some time. We are not talking about the questions of medical competency. Those questions are to be answered by medical experts in the local area. But where either scam groupings are being used to try and pressure third party payers to set particular fees or where, in fact, there are various restraints that are prohibiting innovative, new entrants into the medical field, that is where we think we wrote the law.

We have been looking at this carefully. We have been for years.

Senator Rudman. I hope that you will pursue that vigorously, because you may not know this, but back in 1982, I have often thought maybe the most important thing I did in the Congress was to lead a fight against an effort to strip the power of the FTC to deal with the medical profession. It is a legendary battle, and I just hope that you will vigorously follow that. I happen to believe that in an industry as large as that, with all that is going on that I see, that there are violations of law now existent which are just crying out for remedy. I hope the FTC will vigorously follow that.

Ms. Steiger. We are looking very carefully, and as I said, the sham provider organizations, if and where they do exist, we are very active in the field, and have several ongoing, nonpublic investigations. We are aware of the seriousness of it. It is particularly important, I believe, because at this point in time, the whole health care area is in giant flux. There are many new innovations, no doubt some of them fine; others that may raise antitrust questions, and we are looking very carefully at this question.

Senator RUDMAN. Thank you, Mr. Chairman. I don't have any more questions.

GROCERY RETAILING CONCENTRATION STUDY

Senator BUMPERS. Ms. Steiger, one final question. What were your results of your study of grocery retailing concentration?

Ms. STEIGER. That study has, I believe, been completed. I think it is being reviewed.

Senator BUMPERS. Have you reached any conclusions on it?

Ms. STEIGER. I believe the basic thrust of the conclusion was the question as to whether concentration and price are correlated; it is an econometric study, carefully saying that this is not a statement that should be looked upon as merger policy. It is an econometric study that found that, basically, the existing studies of correlation between concentration and price were not clear.

Most studies in the past have been flawed, and it does look at such things as increased services and the question of whether concentration in some areas or increased price can be due to the fact that the units are smaller and therefore, cannot compete as well on price. It is a long econometric effort.

Senator BUMPERS. Again, when I was first elected Governor, there was a legend that Little Rock, AR, had the highest grocery prices in the country. So I immediately appointed a study commission composed of people I thought were reliable and revered in the community for their integrity and objectivity. The study turned out to be very inconclusive, and I have seen those things all over the country.

Everybody takes exception to grocery prices. But the truth of the matter is, when I look at the earnings reports of the big grocery chains in the Wall Street Journal every 3 months, their earnings are never very impressive. Just that single item tells me that if they didn't have a bird nest on the ground they would be making more money.

Obviously, Giant, I guess, is the biggest retailer in the Washington-Baltimore area. I don't know how to assess their prices. Safeway and Giant always seem to be fairly close together in their pricing. You might object to how much they put in their advertising budget and other things, but I have always felt that grocery competition in this country is pretty remarkable.

Ms. STEIGER. It is vigorous.

GROCERY STUDY RESULTS

Senator BUMPERS. I am anxious to see an analysis of this study. I would like to just see some of the data on it.

Ms. STEIGER. I am happy to provide you with that. I do not promise you that it is going to be any more conclusive than your expert study. It leaves open questions about what is the real driving force of price, even in areas where there is concentration.

We remain very interested, of course, because there are mergers filed on a routine basis between the grocery stores. We do remain concerned that you don't have the kind of a situation that has a competitive overlap where a price increase would be possible because there would be no other supplier.

Senator **Bumpers**. I am switching from red peppers to bananas. One red pepper is $2.40. I am rich, but I am not that rich, and bananas are three for 79 cents, the best bargain in America. So I am switching right now, going from salads to bananas.

My daughter went to one of the eastern Ivy League schools, and she told me that some dowager left that school $500,000 with the proviso that the interest from that fund only be used to serve broccoli in the dining hall.

Ms. **Steiger**. Does the President know about this? [Laughter.]

Senator **Bumpers**. She said they had broccoli three times a day, and she agrees with George Bush; she hates it. I personally like broccoli, but you know, my favorite vegetable is—[laughter.]

I don't think it is a big deal; if he doesn't want to eat broccoli. I don't think he ought to be made to.

Ms. **Steiger**. He is threatening to move on to cauliflower and brussels sprouts. That could be serious.

Senator **Bumpers**. I tell you something: I am going to ask for an appointment at the White House when he includes brussels sprouts. That is my favorite vegetable because I know how to fix them. Are we making a good enough record here?

Senator **Rudman**. Great record. [Laughter.]

Senator **Bumpers**. I have got a recipe for brussels sprouts that is absolutely unequaled. The season is almost over. Of course, you can't find them very often in the store, but I love brussels sprouts.

ADDITIONAL COMMITTEE QUESTIONS

Ms. Steiger, thank, you very much. Gentlemen, thank you very much

Ms. **Steiger**. And again, I thank the committee for your attention and concerns about the budget estimates, and we are grateful.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

FTC REQUEST TO OMB

QUESTION: How does the request you present to us compare to the FTC's request to the Office of Management and Budget?

ANSWER: The Commission requested $77,730,000 and 1,004 workyears. OMB approved a request of $76,990,000 and 970 workyears, a reduction of $740,000 and 34 workyears. The level approved by OMB permits a program expansion but not as fast as the Commission supports.

ICC TRANSFER

QUESTION: Did the FTC include the annual proposal to transfer the consumer protection matters in the household moving industry from the ICC to the FTC in its request to OMB?

ANSWER: No. The ICC transfer was not requested by the FTC but was added by OMB. Our request to OMB of $77,730,000 and 1004 workyears did not include the $1,547,000 and 24 workyears proposed for the ICC transfer. The request to Congress of $76,990,000 and 970 workyears also does not includes the ICC transfer.

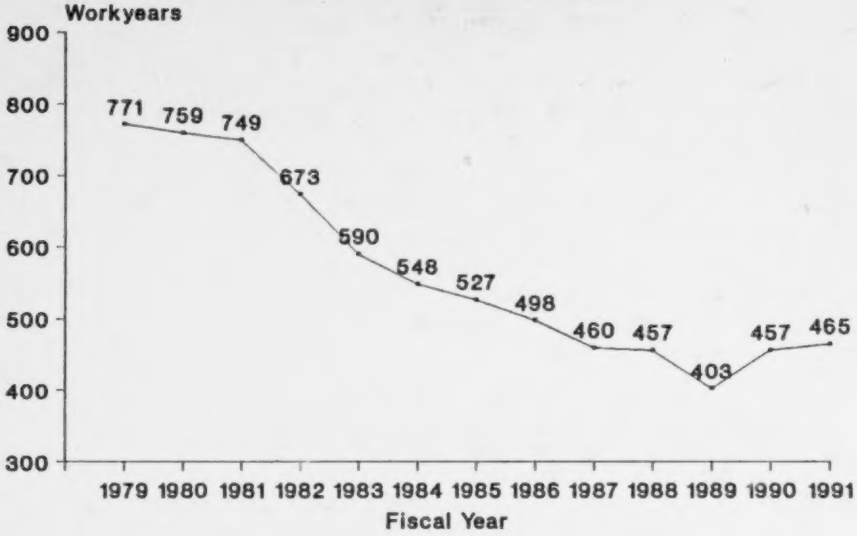
MISSION WORKYEARS

QUESTION: Please provide for the record a graph similar to the one on page ix of the justification that shows the distribution of the workyears between Maintaining Competition and Consumer Protection.

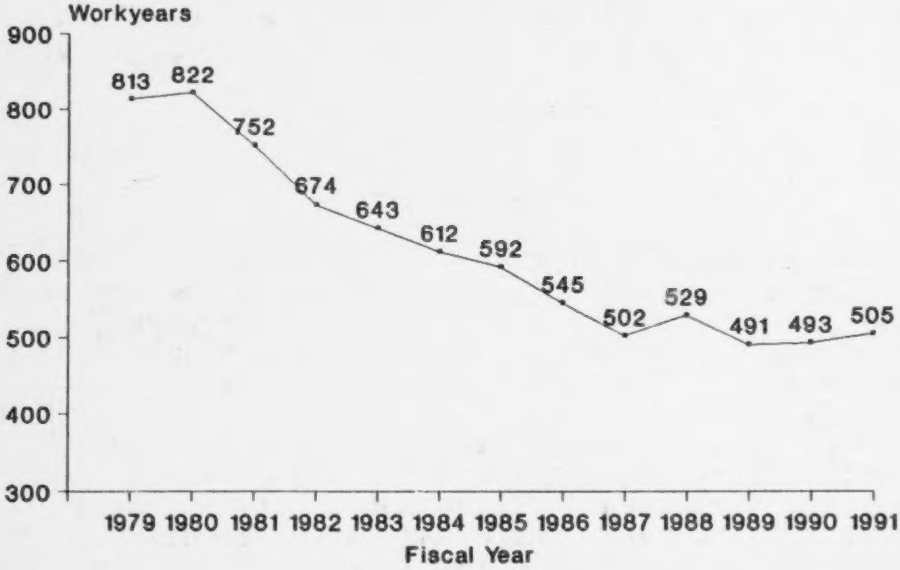
ANSWER: The following graph provides information for the Maintaining Competition and Consumer Protection mission. Please note that in fiscal years 1979 to 1987, there was an additional mission titled Economic Activities. Thus, the total of the Maintaining Competition and the Consumer Protection missions will not equal the total workyears as shown on page ix of the justifications for fiscal years 1979 to 1987.

FEDERAL TRADE COMMISSION

Workyear History - Maintaining Competition Mission
FY1979 - FY1991



Workyear History - Consumer Protection Mission
FY1979 - FY1991



APPROPRIATION RESTRICTIONS

QUESTION: You say in your testimony that the restrictions that we have renewed annually in the appropriations acts are moot. Please explain as the Agriculture Cooperatives always ask each year for the restrictions to be maintained?

ANSWER: The restrictions contained in the annual appropriations act are either moot or inappropriate. These provisions were originally contained in the 1980 FTC Improvements Act, which expired in 1982. An example of a moot restriction is section 10(a) and 10(c) prescribing rules for administering the Public Participation in Rulemaking program. The Commission has not funded this program since fiscal 1982.

The other restrictions generally restrict the Commission from studying, investigating, or otherwise taking any action towards certain groups or practices. The Commission opposes the restriction on the study and investigation of agricultural orders because this provision bestows governmentally protected monopoly power on agricultural cooperatives. Settled antitrust law recognizes the efficiency-enhancing effect of most mergers and joint-ventures; consequently, removal of the current antitrust exemptions in agriculture would curb the exploitation of monopoly power without interfering with the legitimate goal of agricultural policy.

STUDY PLANS

QUESTION: During 1990 and 1991 what federal activities does the Commission plan to study?

ANSWER: Under our Competition Advocacy program, we occasionally file comments with federal agencies that have solicited comments on a particular issue. We would gather information for that particular comment, but do not have a general project to study federal activities.

HOECHST/CELANESE MERGER

QUESTION: The FTC has a complaint that the Hoechst Celanese Corp. merger will substantially lessen competition in the market for acetal, a type of engineering resin. I thought that merger was approved several years ago. Please bring us up-to-date on the status of that matter.

ANSWER: In 1987, the Commission investigated the acquisition of Celanese Corporation, an American chemical firm, by Hoechst A.G., a West German chemical company. The Commission was concerned about anticompetitive effects of two separate horizontal overlaps occasioned by the acquisition. With respect to the first, polyester textile fiber manufacture, the Commission accepted a consent order settling charges that the merger could substantially lessen competition in a U.S. market, and required divestiture to eliminate anticompetitive effects. That divestiture has been accomplished and that part of the investigation of the Hoechst/Celanese acquisition has been closed.

The investigation continued, however, with respect to the second overlap, acetal resin used in a variety of plastic applications ranging from car parts to disposable lighters. Before the acquisition, Hoechst and Celanese had engaged in a production joint venture to manufacture acetal at a plant called Ticona Polymerwerke GMBH, located in Kelsterbache in the West German Republic. Celanese competed with Hoechst A.G., the exclusive sales agent for Ticona, in the production and sale of acetal. In 1989, the Commission issued its administrative complaint charging that the Hoechst/Celanese acquisition had: (1) eliminated substantial actual competition between Celanese and Ticona and between Celanese, Hoechst, and Hoechst A.G.; and (2) significantly enhanced the likelihood of collusion or interdependent coordination among remaining acetal firms in a world market for acetal, with substantial adverse effects in the United States.

The acetal complaint (FTC Dkt. No. 9216) is currently in administrative complaint proceedings in the pre-trial discovery stages, with trial scheduled to begin in November of 1990.

PREDATORY PRICING REPORTS

QUESTION: Our report has directed that the Commission maintain the reports on Predatory Pricing Practices. Were those reports helpful in your study of grocery retailing concentration? Does the Commission have the Predatory Pricing Reports budgeted for 1991?

ANSWER: The draft study on grocery retailing does not deal with issues related to predatory pricing. This report provides a critical analysis of the literature on the effects of grocery retailing concentration on market performance. The report generally concludes that the existing structure performance studies in this industry are weak.

The Commission does not usually budget for specific reports. If requested, the Commission will be able to produce the Predatory Pricing reports in fiscal 1991.

INSPECTOR GENERAL

QUESTION: The Commission has established a 2 person office of Inspector General. What have been the activities of this office since it was established? Please provide details of the $239,000 cost of this office including the annual salaries of the 2 positions.

ANSWER: The total budget for the Office in fiscal 1991 is $239,000 and 2 workyears. A full detail appears below. The salaries and benefits includes the annual salary for the Inspector General (SES-4, $79,200) and one assistant (GS-9, $31,297), funding for the projected January, 1991 payraise, and related benefits. This resource allocation will be reviewed for the fiscal 1991 operating plan, to insure that adequate resources are available to fully meet all IG Act Amendment mandates.

1. Salaries and Benefits............	$145,000
2. Travel..........................	1,000
3. Printing........................	1,000
4. Contracts.......................	90,000
5. Supplies........................	1,000
6. Equipment.......................	1,000
Total..........................	$239,000

The $90,000 allocated to contracts is for the use of contract auditors on an as needed basis.

In fiscal 1990, the Inspector General's Office, among other activities, has completed these reports:

1. Headquarters Imprest Fund.
2. Consumer Redress Distribution Process.
3. Dream Away Diet Pill Redress Distribution.
4. Procurement and Contract Management Activities.

The Office has submitted the semi-annual report to the Congress for the second half of fiscal 1989 and is now completing its semi-annual report for the first half of fiscal 1990.

SUBCOMMITTEE RECESS

Senator **Bumpers**. Thank you. This concludes our hearing. We will recess until 10 a.m. tomorrow, when we will hear from the FBI and the DEA.

[Whereupon, at 11:23 a.m., Tuesday, May 1, the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, May 2.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1991

WEDNESDAY, MAY 2, 1990

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, DC.

The subcommittee met at 10:02 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Adams, Rudman, Kasten, and Gramm.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

STATEMENT OF WILLIAM S. SESSIONS, DIRECTOR

ACCOMPANIED BY:

- **FLOYD I. CLARK, DEPUTY DIRECTOR**
- **LAWRENCE K. YORK, ASSISTANT DIRECTOR, IDENTIFICATION DIVISION**
- **JAY A. BRIXEY, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH, ADMINISTRATIVE SERVICES DIVISION**
- **ADRIAN A. CURTIS, DIRECTOR, BUDGET STAFF**

BUDGET REQUEST

Senator Hollings. This morning the subcommittee will consider the fiscal year 1991 budget of the Federal Bureau of Investigation and the Drug Enforcement Administration. This is the subcommittee's final scheduled hearing and marks the 13th hearing we have held this year, including three field hearings in South Carolina.

First up this morning is Judge William S. Sessions, Director of the Federal Bureau of Investigation. The 1991 budget request for the FBI is $1,640,237,000. This represents a $141 million or 9-percent increase over last year.

However, the FBI will also receive an additional $89 million in the organized crime and drug enforcement reimbursable fund, so the combined total will provide 326 new special agents.

I say that advisedly. I will wait to hear your statement, but will have to clear up where the agents are. You say you have got them and put them here. But then you cancel them there, and lapse some until 1991. I have been toying for the last half hour to try to find them; it is an Easter egg hunt for the agents.

We will find out, Judge. We welcome you, sir, and your colleagues, and we will be delighted to hear from you at this time.

Senator RUDMAN. I have no opening statement.

SUMMARY STATEMENT

Judge SESSIONS. Good morning, Mr. Chairman, Senator Rudman. Of course, I am very pleased to be here today to talk about the FBI's budget for fiscal year 1991.

In these sweeping times of international change, it is no easy matter to predict or allocate funds for future needs. More and more, we are seeing that matters of national concern last year are not necessarily matters of national concern this year. But in a shifting world, one thing is certain: Crime is here to stay.

It is constant in times of stability, and it is inevitably intensified in times like these of political and social realignment.

In fact, national and international crime problems have burgeoned in recent years. As an example, the illegal drug trade has sunk its roots deep into societies across the world and directly forced the growth of related crimes of violence, money laundering, and terrorism. At the same time, advances in modern technologies have been turned to dark purposes. They have created new kinds of crime, and they have rendered traditional crimes more sophisticated and more difficult to trace.

FBI INCREASED RESPONSIBILITIES

FBI responsibilities, as you know, have increased dramatically in the face of these challenges. We have new jurisdictions to investigate, and we have greater responsibilities within our traditional jurisdictions. Savings and loan fraud is a prime example. In addition, our investigations are increasingly long term, labor-intensive, and technical.

Today, the FBI is rapidly adapting to a changing environment. We have restructured and streamlined operations. We have cut away outdated activities; and we have implemented efficiency measures to maximize our effectiveness.

We have the programs, the knowledge, and the determination to take on difficult tasks that lie ahead, but we cannot succeed without the resources. Therefore, I am asking you today to support fully the requests for resources that are contained in the President's budget.

For fiscal year 1991, as you noted, we are requesting a total of $1.64 billion in direct funding and 21,643 permanent positions. The total funding requested constitutes an increase of approximately $141 million over the final 1990 appropriation.

This budget request also provides for a net increase of 507 permanent positions over the fiscal year 1990 level. This increase consists of 335 support positions and 172 agent positions.

Senator HOLLINGS. How many overall agents would that comprise, then?

Judge SESSIONS. In terms of a net increase, Mr. Chairman, we have 249 agents and 296 support employees.

Senator **Hollings**. Overall, then, that gives us how many FBI agents?

Judge **Sessions**. There are about 9,700, Mr. Chairman.

Senator **Hollings**. We are working back up. You went to 10,013 in 1990 and 9,700 or 9,680 in 1991?

Judge **Sessions**. That is correct.

Senator **Hollings**. In 1987, 3 years ago, there were 9,400 and something. All right, sir. Go right ahead.

Judge **Sessions**. The adjustments-to-base level funding include an increase of $16.7 million, which reflects the annualization of additional resources received pursuant to the President's violent crime initiative.

Also included are increases totaling $12.1 million to cover other annualizations and mandatory increases in expenses, such as rent, salaries, and administratively uncontrollable overtime [AUO].

These increases are offset, in part, by decreases to base level funding, totaling $36.8 million. These decreases include a nonrecurring reduction of $15 million associated with the cost of the construction of pod B of the Engineering Research Facility at Quantico, VA, and $10 million associated with the cost of relocating the Washington Metropolitan field office.

In total, the changes to base level funding amount to a net increase of $100,956,000. Under today's circumstances, it is essential that these adjustments be fully funded if the FBI is to be able to operate effectively in the coming year.

ABSORPTION OF ADMINISTRATIVELY UNCONTROLLABLE OVERTIME

In preparing the budget for 1991, the FBI found itself somewhat overtaken by events related to the passage of Public Law 101–173, which, as you know, modified the basis upon which the rate of pay for administratively uncontrollable overtime is calculated.

The enactment of this law will make it possible to pay up to 25 percent of an agent's base pay in his or her grade for administratively uncontrollable overtime, thus raising the previous limit which was calculated as 25 percent of the base pay of a GS–10 entry level agent.

While I believed strongly in the need for this legislation, I was concerned about the impact of its passage, because the law created a $42 million unfunded salary expense to the FBI for fiscal year 1991.

Senator **Hollings**. We are sort of informal in these hearings, Judge. Let's get on to that point right there.

Judge **Sessions**. All right, sir.

Senator **Hollings**. If we are going to really put on agents, as we indicate we must, let's not come around behind now and cut them 42 million dollars' worth or delay the employment of new agents until the ensuing fiscal year. Tell me, how do I make sure we don't do that?

In other words, should we add $42 million so that we can actually grant the request you are making? You make a very strong point, and you say it has got to be done. "Under today's circumstances, it is essential we be fully funded if the FBI is able to operate effectively," and now in the next paragraph, we are going to take away $42 million. You need the $42 million to really do what you say in the previous paragraph, essentially, operate effectively.

Judge SESSIONS. As you know, AUO did pass.

Senator HOLLINGS. I know.

Judge SESSIONS. When it did pass and the $42 million wasn't there, we had to find a way to fund it. The budget that the FBI has submitted accommodates the $42 million, but it means we will have to bring agents on board late in the fiscal year. We have lapsed our work-years by 75 percent as opposed to 50 percent in order to fund administratively uncontrollable overtime costs. That is the way we fund it.

As I said in the beginning, my concern about the increase in administratively uncontrollable overtime was that it was unfunded, and this is the manner in which we would be able to fund it.

Senator HOLLINGS. This is the way you have done it, but if you do it right or the way you would want to do it, how would that be? Should we add $42 million?

Judge SESSIONS. It would be desirable, but that is not the budget that we have proposed. I know the administration has other priorities, and that other agencies also have special needs and priorities.

Senator HOLLINGS. But there is no question, and I hope you don't mind being out of order and I hope you don't mind me disturbing your statement.

Judge SESSIONS. No, sir; I don't.

Senator HOLLINGS. Just yesterday and last weekend we were arguing white-collar crime, savings and loan crime. We had the Attorney General here last week, and he said in his presentation that we were cutting 65 positions from the white-collar crime area, and that left me still confused.

Now we come here and we find a $42 million cut, and if I am Senator X and I look here and I say: "Wait a minute, we have got more crime out there; we have got over 1,000 cases estimated between $100,000 and $1 million, $100,000 and $1 million kind of cases that lay fallow because we can't get to them; we don't have the agents."

Then I look at the FBI's chart itself and see where we cut 400-and-some agents out from 1990 to 1991.

Give me an amendment to put the dollars back. I could pass that amendment in 10 minutes on the floor, I believe, I really do.

We are just going to have to talk candidly here and find out. You need the $42 million. That is what I hear you saying. Go right ahead with your statement.

Senator RUDMAN. If I could just inject one point?

Senator HOLLINGS. Yes.

Senator RUDMAN. I assume the Bureau has its own ideas as to how it would want to do this, and I assume those ideas are submitted, with all other agencies', to OMB.

Judge SESSIONS. That is correct.

Senator RUDMAN. And OMB comes back and tells you how they think you better do it, and that is binding. Obviously, you would have no objections if we took the shortest distance between two points—a straight line—and put the money back, isn't that correct?

Judge SESSIONS. If the money was put into our budget, then the need obviously would be met; however, I understand the importance of the process you have described and the integrity of the budgeting process.

Senator Rudman. You have to abide by the OMB. Of course, we don't, and we don't.

Senator Hollings. That is what they would call in this sophisticated Washington an oxy-moron. [Laughter.]

The integrity of the budget process, right? That is the first time we have ever heard it had integrity.

Senator Rudman. Let's not get off on that this morning.

Senator Hollings. No; Judge, go ahead. I think we have got it loud and clear.

We really admire the job you are doing and the FBI is doing, and we want to make sure you are not shortchanged here, because we have got a lot of work to do. Yes, sir.

Judge Sessions. Thank you. I will, for the record, include the additional part of the statement that I would have made concerning administratively uncontrollable overtime and proceed.

[The information follows:]

Administratively Uncontrollable Overtime

In preparing the budget for 1991, the FBI found itself somewhat overtaken by events related to the passage of Public Law 101-173, which modified the basis upon which the rate of pay for administratively uncontrollable overtime is calculated. The enactment of this law will make it possible to pay up to 25 percent of an agent's base pay in his grade for administratively uncontrollable overtime, thus raising the previous limit which was calculated as 25 percent of base pay of a GS-10 entry level agent. While I believed strongly in the need for this legislation, I was concerned about the impact of its passage, because the law created a $42 million unfunded salary expense to the FBI for fiscal year 1991.

In seeking a way to absorb the additional $42 million in salary expense, the FBI originally proposed to reduce the funded agent complement. The only options I thought were open to me at that time were to reduce personnel or to reprogram equipment. Because our equipment budget has been so sharply reduced by past absorptions, I considered a permanent reduction of this magnitude to be ill advised and unacceptable.

The FBI will fund the provisions of Public Law 101-173 ($41,979,000) from within the funding in the initial President's budget. To do so, the FBI will reduce base operating expenses for travel, confidential expenditures, and equipment. Second, the lapse between positions and work-years requested as program increases has been adjusted to make additional resources totaling $26,655,000 available. Finally, the FBI proposes to redirect $2,655,000 in base funding previously used for background investigations for United States Attorney applicants. Appropriations language is being requested to permit the FBI to continue these background investigations in a reimbursable program. It will be essential that the base funding be appropriated if the FBI is to have sufficient resources for the additional AUO funding.

Absorption of increased AUO is being proposed as follows:

Item	*Amount*
Travel reduction	$1,000,000
Confidential expenditures reduction	1,000,000
Equipment reduction:	
Training	1,600,000
ADP/T	2,716,000
Technical	3,630,000
Automobiles	1,064,000
Furniture	1,659,000
Subtotal	10,669,000
Reimbursements for Department applicants	2,655,000

Item	Amount
Increased lapse rate	26,655,000
Total	41,979,000

EQUIPMENT PURCHASES

Senator **Hollings**. And highlight any other part of it. We are interested in hearing it.

Judge **Sessions**. Over the past several years, all of the agencies of the Federal Government have absorbed many increases in expenses, while the demand for services continued to increase. During this time, the FBI has fought to maintain the level of investigative operations and support functions, and in order to do this, has had to reduce expenditures for equipment.

The FBI's expenditures can only be made for personnel in the form of salaries and benefits, or for expenses, which take the form of supplies, equipment, and various overhead items.

We have historically chosen to preserve our personnel base at the expense of equipment. I have distributed to each of you materials which depict some of the cost increases funded by offsets against our equipment budget.

[The information follows:]

Resource Requests to the Office of Management and Budget and the Congress for 1991

The following information discusses the differences between the Federal Bureau of Investigation request to OMB and Congress.

For 1991, the final request to Congress for the Federal Bureau of Investigation (FBI) reflects a total reduction of 2,886 positions and $332,138,000 from the OMB request and includes a reduction of 856 positions (336 agents) and $173,875,000 to requested program enhancements.

The FBI's base level was reduced by $116,348,000 including the following: $15 million for construction of the Engineering Research Facility (ERF)—Pod B; $10 million for the relocation of the Washington Metropolitan Field Office; $14,160,000 for one-half of the 1991 pay raise; $20,941,000 for the 1990 sequester; 38 positions and $1,844,000 to meet the Administration's targeted budget deficit levels; and $321,000 in savings associated with the replacement of 23 agents in administrative positions at headquarters with non-agents. The FBI also did not receive funding for various mandatory increases, including GSA recurring services, building maintenance, and general pricing level adjustments.

Program increases denied.—In order to fund a portion of the increased costs of AUO, all positions requested in 1991, except those for the drugs program, are lapsed at 75 percent, rather than the typical 50 percent. New positions requested for the drugs program are lapsed at 65 percent. OMB has agreed to provide full annualization of these positions in 1992. Due to the new lapse, personnel funding for program enhancements reflected in the request to Congress is less than that requested to OMB. This increased lapse rate is reflected in the program reductions identified below:

Other field programs.—Total increases of 244 positions (114 agents) and $32,890,000 were denied, including additional resources for the Bureau Applicant program and for establishing a legal attaché in Madrid, Spain.

Organized crime program.—Increases totaling 188 positions (89 agents) and $18,768,000 were denied, including the following: 100 positions to conduct additional Civil RICO investigations; 86 positions requested to support intensified efforts against Asian Organized Crime; $2,532,000 for confidential case expenditures; 2 positions to establish a legal attaché in Bangkok, Thailand; $849,000 for aircraft operations; $696,000 for public source information subscription costs; and $1,600,000 to increase the number of offices supported by Special Operation Groups/Off-premise sites.

Drugs program.—Increases of $3,348,000 were denied. OMB supported the FBI's full request for this program. The difference between the FBI's request to

OMB and the current request results from lapsing positions at 65 percent instead of 50 percent in order to absorb the increased costs of AUO.

White-collar crime program.—Increases denied total 165 positions (95 agents) and $20,536,000, including 102 positions for the investigation of environmental crimes, 55 positions for bankruptcy fraud, 8 accounting technician positions, and $214,000 for payments to cooperating witnesses.

Training program.—2 positions and $3,916,000 were denied, including $1,307,000 to provide for 10 mm pistol ammunition for increased firearms training and $450,000 for field firing-range construction.

Forensic Services—Federal program.—Enhancements of $4,507,000 were denied, in part, for the architectural design of a new FBI laboratory facility ($3,750,000) and to obtain explosives examination equipment ($254,000).

Automated data processing and telecommunications program.—A total of 37 positions and $27,589,000 were denied. Requests not supported include: $14 million for the procurement of intelligent work stations; $10,700,000 to replace headquarters equipment which has surpassed its life-cycle; and $1,600,000 for increased supply and maintenance requirements.

Records management program.—Resources totaling 162 positions (38 agents) and $11,009,000 were denied, including the following: 30 document examiner positions for the Freedom of Information Privacy Act Section; 128 positions to conduct background investigations of contractors and 5-year reinvestigations of FBI employees with access to National Security Information; 4 document classification assistant positions; and $1,500,000 for optical disk storage hardware for automation.

Technical field support and equipment program.—This program was denied 41 positions and $30,401,000. Included in this reduction were the following: $17,012,000 to construct ERF—Pod B; 32 field electronics technician positions; 9 support positions; and $11,208,000 for the replacement/expansion of the technical equipment inventory.

Fingerprint identification program.—The FBI's request of $3,346,000 was denied. This funding was requested to purchase additional Automated Fingerprint readers and cameras for the Automated Identification System.

Criminal justice data and statistical services program.—Funding of $17 million for the first-year costs of the National Crime Information Center 2000 project was cut.

Executive direction and control program.—All position increases were supported, but lapsing positions at 75 percent resulted in a reduction of $92,000.

Administrative services program.—The request for 17 positions and $473,000 was denied. These resources were requested for contract, procurement, property management, and accounting areas to support increasing FBI field activities.

Program decreases.—In addition to the program enhancements denied, the FBI's 1991 budget includes decreases totaling 740 positions (including 252 agents) and $41,915,000. Program decreases are detailed below:

Program decreases totaling 514 positions (including 227 agents) and $27,322,000 have been proposed in order to meet targeted budget deficit levels established by the Administration. These decreases are presented in the following table:

[Dollars in thousands]

Program	Positions	Amount
Other field programs	−235	−$12,528
Organized crime	−47	−2,232
White-collar crime	−65	−3,255
Training	−11	−529
Forensic services—Federal	−10	−489
ADP and telecommunications	−26	−2,888
Records management	−24	−796
Tech. field support and equipment	−4	−1,295
General law enforcement training	−8	−397
Forensic services—non-Federal	−4	−193
Fingerprint identification	−43	−1,277
Criminal justice data and statistics services	−6	−195
Executive direction and control	−12	−575

[Dollars in thousands]

Program	Positions	Amount
Administrative services	−19	−673
Total	−514	−27,322

A program decrease of 80 positions (including 25 agents) and $13,724,000 is also included to partially offset the $41,979,000 costs of increased AUO payments. This includes the following program reductions: travel ($1 million); confidential case funding in Other Field Programs ($1 million); conducting background investigations for the U.S. Attorneys as a reimbursable program as is the practice with other Federal agencies (80 positions including 25 agents) and $2,655,000); and equipment funding ($9,069,000) including $1,064,000 for replacement vehicles, $2,716,000 for ADP equipment, $3,630,000 for field investigative equipment, and $1,659,000 for field office furniture and related equipment. Reductions by program are as follows:

[Dollars in thousands]

Program	Positions	Amount
Other field programs	−80	−$6,521
ADP and telecommunications		−2,716
Tech. field support and equipment		−4,487
Total	−80	−13,724

The final program reduction is a decrease of 146 positions and $869,000 for A-76 management and productivity initiatives. The decrease is reflected in the Records Management (73 positions and $438,000) and the Fingerprint Identification (73 positions and $431,000) programs.

ABSORPTION OF AUO

Judge SESSIONS. The matter of absorbing the $42 million increase in the cost of administratively uncontrollable overtime has now been reconsidered. This budget proposes a means of funding the increased costs in fiscal year 1991 which requires manageable program decreases, along with an adjustment to the lapse of new positions.

Since the FBI is no longer faced with a permanent reprogramming to fund the additional cost of administratively uncontrollable overtime, we are able to absorb these costs for fiscal year 1991 without reducing personnel.

Accordingly, this budget request includes program reductions for regional conferences and confidential expenditures of $1 million each, and base equipment for $9.1 million. In addition, $1.6 million originally identified for capital improvements projects will also be applied to administratively uncontrollable overtime.

As you know, another $26.7 million of the costs associated with Public Law 101-173 will be absorbed by delaying the hiring of personnel for the President's 1991 initiatives until the latter part of the year.

In addition, the FBI is seeking approval to conduct certain background investigations for the U.S. attorneys on a reimbursable basis, which would allow an additional $2.7 million to be applied to the overtime cost.

DRUG ISSUE

I would like to take this opportunity to discuss very briefly three significant programs of the FBI, to remind you of their importance to the American people, and to ask you to support fully the request for resources contained in the budget.

It is widely accepted that the foremost law enforcement issue in America today is the drug problem. Dealing with this complex problem will continue to require a coordinated effort on many fronts and at many levels of Government. Although there is a continuing debate as to how precisely to combat the production, transportation, sale, and consumption of illegal drugs, one thing is clear. The supply side of the drug problem must be dealt with in a strong and consistent fashion. This mandates attacking the suppliers, the transporters, and the merchants. It requires identifying and investigating the groups and organizations which traffic in illegal drugs, bringing them to trial, and seizing and forfeiting the fruits and instrumentalities of their crimes.

In 1986, the FBI, with the concurrence of the Attorney General, adopted a very well-defined national drug strategy which concentrates the resources of the FBI on the trafficking organizations at the highest level of international and national drug trafficking. Since 1983, the FBI has shifted resources in such a way as to enable us to conduct vigorous long-term investigations, expand the drug intelligence base, coordinate continuously with the Drug Enforcement Administration, and provide assistance to other Federal, State, and local law enforcement agencies.

Our implementation of this national drug strategy is having significant results. Cases such as *Polar Cap,* in which over 50 million dollars' worth of assets were seized, *Cat Com,* which resulted in the indictment of 93 individuals and the dismantlement of seven drug trafficking organizations, and *White Mare,* which resulted in the largest domestic seizure of heroin ever, 900 pounds, and the identification and indictment of five international heroin trafficking organizations are proof that our strategy works.

In fiscal year 1989, drug-related indictments and informations were brought against 4,467 individuals, convictions were obtained against 2,853 individuals, and over $125 million in assets were seized and $45 million forfeited as a result of FBI drug investigations.

Our mission is clear, our strategy is working, and we are having an impact. The FBI intends to keep the pressure on these enterprises in this vital part of the war on drugs. Therefore, this 1991 budget requests an increase of 333 positions, 119 work-years, and $19.2 million in direct funding for the drugs program. For positions that includes 94 special agents, Mr. Chairman, and 239 support people. That is the breakdown of the 333 positions, with an additional 224 reimbursable work-years for our participation in the Organized Crime Drug Enforcement Task Force Program.

WHITE-COLLAR CRIME

The investigation of white-collar crime remains one of the top national priorities of the FBI. This program covers, as you know, a broad range of activities which are generally classified as Government fraud, environmental crimes, public corruption and financial crimes, including financial institution offenses, each of which deals with issues critical to America's continued confidence in the institutions of Government and private enterprise. The magnitude of white-collar crime is such that it is impossible for the FBI to investigate all of the white-collar crime cases that come to our attention. We must, therefore, constantly analyze trends so as to direct our resources to maximum advantage.

Cases such as *Hedge Clipper* and *Sour Mash* have exposed corrupt trading practices in the commodities trading industry in Chicago, and the *Illwind* case, which focused on defense procurement fraud. Each of those cases stand as proof that the FBI is on the cutting edge of law enforcement in this country.

In fiscal year 1989, the FBI investigations were the basis for over 4,500 convictions and pretrial diversions in white-collar crime cases. In addition, white-collar crime cases resulted in fines, recoveries, and restitutions totaling $946 million, along with $24 million in forfeitures and $328.4 million in seizures. This is a return of almost 7 to 1 over the total cost of the White-Collar Crime Program.

Here again, the FBI's strategy is working, and we are having an impact. We are continuing the investigation of significant cases in each of the categories of white-collar crime and are mobilizing resources to vigorously pursue financial institutions fraud. We are requesting an increase of 440 positions; that would be a breakdown of 249 special agents and 191 support positions, 110 work-years and funding in the amount of $12.4 million for the White-Collar Crime Program.

The third significant area that I would like to discuss briefly is the organized crime program. The FBI's organized crime program continues to counter the criminal activities of La Cosa Nostra and other organized criminal groups. The FBI's enterprise theory of investigation, with prosecutions under both civil and criminal provisions of the Racketeer-Influenced and Corrupt Organizations [RICO] statute, has proven to be extremely effective.

The organized crime national strategy, which was based on careful analysis and application of the law, has enabled the FBI to have a profound effect upon these criminal organizations while minimizing the resources that are required.

LA COSA NOSTRA CONVICTIONS

In fiscal year 1989, the FBI's organized crime national strategy resulted in the indictment or conviction of 18 members of the La Cosa Nostra hierarchy. Additionally, 643 convictions were obtained and 510 indictments were filed against members and associates of La Cosa Nostra.

Additionally, 119 defendants were charged in civil complaints filed under the RICO statute, and 20 judgments were obtained against La Cosa Nostra members, unions, and others. Property valued at over $9 million was seized utilizing the civil provisions of the RICO statute.

These investigations and cases have caused serious disruption of La Cosa Nostra activities in Philadelphia, Buffalo, New York City, and West Virginia, among other places. We can have this continuing impact by aggressive implementation of our national strategy.

In addition to applying resources to the investigation of criminal enterprises of La Cosa Nostra, we are witnessing the dynamic emergence of Asian groups engaged in organized criminal activity. The FBI requires an increase of 172 positions, 44 work-years and $4.1 million for the organized crime program in order to respond mainly to the emergence of Asian organized crime. This enhancement would include 78 agents and 94 support personnel.

The crime problems for which the FBI is responsible are many and are varied, but they share certain characteristics. They are each, in their own right, complex and sophisticated. They each require complex and sophisticated investigative techniques, and this translates into the need for extensive technical support for initiatives which are based upon careful analysis and conservative estimates.

The program enhancements we are requesting involve resources needed to continue initiatives which the Congress has supported in the past. Over 87 percent of the program increases requested in this budget are concentrated in the FBI's priority investigative programs. The remainder of the increases are spread among the various initiatives which directly support those investigative programs.

OTHER FUNDING AREAS

I cannot overstate the importance of maintaining a balance in the mix between personnel and equipment in the FBI. Critical programs including the automated data processing and telecommunications program, the technical field support and equipment program, the records management program, and the forensic services-Federal program are essential to the continued success of the FBI.

In the final analysis, the work of the FBI involves collection, analysis, and preservation of information about, or physical evidence of, violations of law. If we are unable to gather and process information and evidence, all the planning in the world is of little use.

In the aggregate, this budget includes program increases of 1,285 positions, 357 direct work-years, and funding in the amount of $81.8 million.

PROGRAM DECREASES

These increases are offset, in part, by program decreases of 740 positions, 740 work-years, and funding in the amount of $41.9 million. Most of this reduction, 514 positions, 514 work-years, and $27.3 million, is included in order to comply with the deficit reduction targets established by the administration.

A-76 REDUCTIONS

An additional reduction of 146 positions, 146 work-years, and $869,000 reflects anticipated savings to be derived from the implementation of the Office of Management and Budget's circular No. A-76. The remaining program decreases are included to allow for funding the increased cost of administratively uncontrollable overtime, as I explained earlier.

CONCLUSION OF STATEMENT

At the outset of my remarks, I touched briefly on the priority programs of the FBI, and spoke about the strategies designed to maximize the impact of resources allocated to each. I also spoke about the many base level and program changes which are included in this budget.

If the FBI is to continue to serve the American people in the way that they have come to expect, we must be able to attract and retain people who meet rigorous standards and who can stand up to the demands made of them. Such people deserve to be compensated fairly, and they also deserve the tools necessary to do the job.

This budget request, if funded, will enable the FBI to meet our obligations and to utilize the plans that we have so carefully devised. I am confident that we can do this because the men and women who make up the FBI have a strong, continuing commitment to duty and a passion for excellence.

PREPARED STATEMENT

I present this budget request to you today, certain in the knowledge that our mission is clear, that our strategies work and that the FBI will continue to serve proudly and well, and I ask you for your support.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JUDGE WILLIAM S. SESSIONS

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I AM PLEASED TO BE HERE TODAY TO TALK ABOUT THE FBI'S BUDGET FOR FISCAL YEAR 1991.

IN THESE TIMES OF SWEEPING INTERNATIONAL CHANGES, IT IS NO EASY MATTER TO PREDICT AND ALLOCATE FUNDS FOR FUTURE NEEDS. MORE AND MORE, WE ARE SEEING THAT MATTERS OF NATIONAL CONCERN LAST YEAR ARE NOT NECESSARILY MATTERS OF NATIONAL CONCERN THIS YEAR. BUT IN A SHIFTING WORLD, ONE THING IS CERTAIN: CRIME IS HERE TO STAY. IT IS CONSTANT IN TIMES OF STABILITY--AND IT INEVITABLY INTENSIFIES IN TIMES, LIKE THESE, OF POLITICAL AND SOCIAL REALIGNMENTS.

IN FACT, NATIONAL AND INTERNATIONAL CRIME PROBLEMS HAVE BURGEONED IN RECENT YEARS. AS AN EXAMPLE, THE ILLEGAL DRUG TRADE HAS SUNK ITS ROOTS DEEP INTO SOCIETIES ACROSS THE WORLD--AND DIRECTLY FORCED THE GROWTH OF RELATED CRIMES OF VIOLENCE, MONEY LAUNDERING, AND TERRORISM. AT THE SAME TIME, ADVANCES IN MODERN TECHNOLOGIES HAVE BEEN TURNED TO DARK PURPOSES: THEY HAVE CREATED NEW KINDS OF CRIME, AND THEY HAVE RENDERED TRADITIONAL CRIMES MORE SOPHISTICATED AND MORE DIFFICULT TO TRACE.

FBI RESPONSIBILITIES, AS YOU KNOW, HAVE INCREASED DRAMATICALLY IN THE FACE OF THESE CHALLENGES--WE HAVE NEW JURISDICTIONS TO INVESTIGATE, AND WE HAVE GREATER RESPONSIBILITIES WITHIN OUR TRADITIONAL JURISDICTIONS. SAVINGS-AND-LOAN FRAUD IS A PRIME EXAMPLE. IN ADDITION, OUR INVESTIGATIONS ARE INCREASINGLY LONG-TERM, LABOR INTENSIVE, AND TECHNICAL.

TODAY THE FBI IS RAPIDLY ADAPTING TO A CHANGING

ENVIRONMENT. WE HAVE RESTRUCTURED AND STREAMLINED OPERATIONS; WE HAVE CUT AWAY OUTDATED ACTIVITIES; AND WE HAVE IMPLEMENTED EFFICIENCY MEASURES TO MAXIMIZE OUR EFFECTIVENESS. WE HAVE THE PROGRAMS, THE KNOWLEDGE, AND THE DETERMINATION TO TAKE ON THE DIFFICULT TASKS THAT LIE AHEAD--BUT WE CANNOT SUCCEED WITHOUT THE RESOURCES. THEREFORE, I AM ASKING YOU TODAY TO SUPPORT FULLY THE REQUESTS FOR RESOURCES THAT ARE CONTAINED IN THE PRESIDENT'S BUDGET.

FOR FISCAL YEAR 1991, WE ARE REQUESTING A TOTAL OF $1.64 BILLION IN DIRECT FUNDING AND 21,643 PERMANENT POSITIONS. THE TOTAL FUNDING REQUESTED CONSTITUTES AN INCREASE OF APPROXIMATELY $141 MILLION OVER THE FINAL 1990 APPROPRIATION. THIS BUDGET REQUEST ALSO PROVIDES FOR A NET INCREASE OF 507 PERMANENT POSITIONS OVER THE FISCAL YEAR 1990 LEVEL. THIS INCREASE CONSISTS OF 335 SUPPORT POSITIONS AND 172 AGENT POSITIONS.

ADJUSTMENTS TO BASE FUNDING

THE ADJUSTMENTS TO BASE LEVEL FUNDING INCLUDE AN INCREASE OF $16.7 MILLION WHICH REFLECTS THE ANNUALIZATION OF ADDITIONAL RESOURCES RECEIVED PURSUANT TO THE PRESIDENT'S VIOLENT CRIME INITIATIVE. INCREASES TOTALLING $121.1 MILLION TO COVER OTHER ANNUALIZATIONS AND MANDATORY INCREASES IN EXPENSES SUCH AS RENT AND SALARY AND ADMINISTRATIVELY UNCONTROLLABLE OVERTIME, SALARIES ARE ALSO INCLUDED. THESE INCREASES ARE OFFSET IN PART BY DECREASES TO BASE LEVEL FUNDING TOTALLING $36.8 MILLION. THESE DECREASES INCLUDE A NONRECURRING REDUCTION OF $15 MILLION ASSOCIATED WITH THE COST OF CONSTRUCTION OF POD B OF THE ENGINEERING RESEARCH FACILITY AT QUANTICO, VIRGINIA, AND $10 MILLION ASSOCIATED WITH THE COST OF RELOCATING THE WASHINGTON METROPOLITAN FIELD OFFICE. IN

TOTAL THE CHANGES TO BASE LEVEL FUNDING AMOUNT TO A NET INCREASE OF $100,956,000. UNDER TODAY'S CIRCUMSTANCES, IT IS ESSENTIAL THAT THESE ADJUSTMENTS BE FULLY FUNDED IF THE FBI IS TO BE ABLE TO OPERATE EFFECTIVELY IN THE COMING YEAR.

ADMINISTRATIVELY UNCONTROLLABLE OVERTIME

IN PREPARING THE BUDGET FOR 1991 THE FBI FOUND ITSELF SOMEWHAT OVERTAKEN BY EVENTS RELATED TO THE PASSAGE OF PUBLIC LAW 101-173, WHICH MODIFIED THE BASIS UPON WHICH THE RATE OF PAY FOR ADMINISTRATIVELY UNCONTROLLABLE OVERTIME IS CALCULATED. THE ENACTMENT OF THIS LAW WILL MAKE IT POSSIBLE TO PAY UP TO 25 PERCENT OF AN AGENT'S BASE PAY IN HIS GRADE FOR ADMINISTRATIVELY UNCONTROLLABLE OVERTIME, THUS RAISING THE PREVIOUS LIMIT WHICH WAS CALCULATED AS 25 PERCENT OF THE BASE PAY OF A GS-10 ENTRY LEVEL AGENT. WHILE I BELIEVED STRONGLY IN THE NEED FOR THIS LEGISLATION, I WAS CONCERNED ABOUT THE IMPACT OF ITS PASSAGE, BECAUSE THE LAW CREATED A $42 MILLION UNFUNDED SALARY EXPENSE TO THE FBI FOR FISCAL YEAR 1991.

IN SEEKING A WAY TO ABSORB THE ADDITIONAL $42 MILLION IN SALARY EXPENSE, THE FBI ORIGINALLY PROPOSED TO REDUCE THE FUNDED AGENT COMPLEMENT. THE ONLY OPTIONS I THOUGHT WERE OPEN TO ME AT THAT TIME WERE TO REDUCE PERSONNEL OR TO REPROGRAM EQUIPMENT. BECAUSE OUR EQUIPMENT BUDGET HAS BEEN SO SHARPLY REDUCED BY PAST ABSORPTIONS, I CONSIDERED A PERMANENT REDUCTION OF THIS MAGNITUDE TO BE ILL ADVISED AND UNACCEPTABLE.

OVER THE PAST SEVERAL YEARS ALL OF THE AGENCIES OF THE FEDERAL GOVERNMENT HAVE ABSORBED MANY INCREASES IN EXPENSES, WHILE THE DEMAND FOR SERVICES CONTINUED TO INCREASE. DURING THIS TIME THE FBI HAS FOUGHT TO MAINTAIN THE LEVEL OF INVESTIGATIVE OPERATIONS AND

SUPPORT FUNCTIONS, AND IN ORDER TO DO THIS HAS HAD TO REDUCE EXPENDITURES FOR EQUIPMENT. THE FBI'S EXPENDITURES CAN ONLY BE MADE FOR PERSONNEL, IN THE FORM OF SALARIES AND BENEFITS, OR FOR EXPENSES, WHICH TAKE THE FORM OF SUPPLIES, EQUIPMENT AND VARIOUS OVERHEAD ITEMS. WE HAVE HISTORICALLY CHOSEN TO PRESERVE OUR PERSONNEL BASE AT THE EXPENSE OF EQUIPMENT. I HAD DISTRIBUTED TO EACH OF YOU A GRAPHIC WHICH DEPICTS SOME OF THE COST INCREASES FUNDED BY OFFSET AGAINST OUR EQUIPMENT BUDGET.

THE MATTER OF ABSORBING THE $42 MILLION INCREASE IN COST OF ADMINISTRATIVELY UNCONTROLLABLE OVERTIME HAS NOW BEEN RECONSIDERED. THIS BUDGET PROPOSES A MEANS OF FUNDING THE INCREASED COST IN FISCAL YEAR 1991 WHICH REQUIRES MANAGEABLE PROGRAM DECREASES, ALONG WITH AN ADJUSTMENT TO THE LAPSE OF NEW POSITIONS. SINCE THE FBI IS NO LONGER FACED WITH A PERMANENT REPROGRAMMING TO FUND THE ADDITIONAL COST OF ADMINISTRATIVELY UNCONTROLLABLE OVERTIME, WE ARE ABLE TO ABSORB THESE COSTS FOR FISCAL YEAR 1991 WITHOUT REDUCING PERSONNEL.

ACCORDINGLY, THIS BUDGET REQUEST INCLUDES PROGRAM REDUCTIONS FOR REGIONAL CONFERENCES AND CONFIDENTIAL EXPENDITURES OF $1 MILLION EACH, AND BASE EQUIPMENT FOR $9.1 MILLION. IN ADDITION $1.6 MILLION ORIGINALLY IDENTIFIED FOR CAPITAL IMPROVEMENTS PROJECTS WILL BE APPLIED TO ADMINISTRATIVELY UNCONTROLLABLE OVERTIME. ANOTHER $26.7 MILLION OF THE COSTS ASSOCIATED WITH PUBLIC LAW 101-173 WILL BE ABSORBED BY DELAYING THE HIRING OF PERSONNEL FOR THE PRESIDENT'S 1991 INITIATIVES UNTIL THE LATTER PART OF THE YEAR. IN ADDITION, THE FBI IS SEEKING APPROVAL TO CONDUCT CERTAIN BACKGROUND INVESTIGATIONS FOR THE UNITED STATES ATTORNEYS ON A REIMBURSABLE BASIS, WHICH

WOULD ALLOW AN ADDITIONAL $2.7 MILLION TO BE APPLIED TO THE OVERTIME COST.

PROGRAM CHANGES

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO DISCUSS VERY BRIEFLY THREE SIGNIFICANT PROGRAMS OF THE FBI, TO REMIND YOU OF THEIR IMPORTANCE TO THE AMERICAN PEOPLE, AND TO ASK YOU TO SUPPORT FULLY THE REQUEST FOR RESOURCES CONTAINED IN THIS BUDGET.

DRUGS PROGRAM

IT IS WIDELY ACCEPTED THAT THE FOREMOST LAW ENFORCEMENT ISSUE IN AMERICA TODAY IS THE DRUG PROBLEM. DEALING WITH THIS COMPLEX PROBLEM WILL CONTINUE TO REQUIRE A COORDINATED EFFORT ON MANY FRONTS AND AT MANY LEVELS OF GOVERNMENT. ALTHOUGH THERE IS A CONTINUING DEBATE AS TO PRECISELY HOW TO COMBAT THE PRODUCTION, TRANSPORTATION, SALE, AND CONSUMPTION OF ILLEGAL DRUGS, ONE THING IS CLEAR. THE SUPPLY SIDE OF THE DRUG PROBLEM MUST BE DEALT WITH IN A STRONG AND CONSISTENT FASHION. THIS MANDATES ATTACKING THE SUPPLIERS, THE TRANSPORTERS, AND THE MERCHANTS. IT REQUIRES IDENTIFYING AND INVESTIGATING THE GROUPS AND ORGANIZATIONS WHICH TRAFFIC IN ILLEGAL DRUGS, BRINGING THEM TO TRIAL, AND SEIZING AND FORFEITING THE FRUITS AND INSTRUMENTALITIES OF THEIR CRIMES.

IN 1986, THE FBI, WITH THE CONCURRENCE OF THE ATTORNEY GENERAL, ADOPTED A WELL-DEFINED NATIONAL DRUG STRATEGY WHICH CONCENTRATES THE RESOURCES OF THE FBI ON THE TRAFFICKING ORGANIZATIONS AT THE HIGHEST LEVELS OF INTERNATIONAL AND NATIONAL DRUG TRAFFICKING. SINCE 1983 THE FBI HAS SHIFTED RESOURCES IN SUCH A WAY AS TO ENABLE US TO CONDUCT VIGOROUS LONG-TERM INVESTIGATIONS, EXPAND THE DRUG INTELLIGENCE BASE, COORDINATE CONTINUOUSLY WITH THE DRUG ENFORCEMENT ADMINISTRATION, AND PROVIDE

ASSISTANCE TO OTHER FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES.

THE IMPLEMENTATION OF THIS STRATEGY IS HAVING SIGNIFICANT RESULTS. CASES SUCH AS "POLAR CAP," IN WHICH OVER $50 MILLION WORTH OF ASSETS WERE SEIZED, "CAT-COM," WHICH RESULTED IN THE INDICTMENT OF 93 INDIVIDUALS AND THE DISMANTLEMENT OF SEVEN DRUG TRAFFICKING ORGANIZATIONS AND "WHITE MARE," WHICH RESULTED IN THE LARGEST DOMESTIC SEIZURE OF HEROIN EVER, 900 POUNDS, AND THE IDENTIFICATION AND INDICTMENT OF FIVE INTERNATIONAL HEROIN TRAFFICKING ORGANIZATIONS ARE PROOF THAT OUR STRATEGY WORKS.

IN FISCAL YEAR 1989, DRUG-RELATED INDICTMENTS AND INFORMATIONS WERE BROUGHT AGAINST 4,467 INDIVIDUALS, CONVICTIONS WERE OBTAINED AGAINST 2,853, AND OVER $125 MILLION IN ASSETS WERE SEIZED AND $45 MILLION FORFEITED AS A RESULT OF FBI DRUG INVESTIGATIONS.

OUR MISSION IS CLEAR, OUR STRATEGY IS WORKING, AND WE ARE HAVING AN IMPACT. THE FBI INTENDS TO KEEP THE PRESSURE ON THESE ENTERPRISES IN THIS VITAL PART OF THE WAR ON DRUGS. THEREFORE, THIS 1991 BUDGET REQUESTS AN INCREASE OF 333 POSITIONS, 119 WORKYEARS, AND $19.2 MILLION IN DIRECT FUNDING FOR THE DRUGS PROGRAM, ALONG WITH A NET ADDITIONAL 224 REIMBURSABLE WORKYEARS FOR OUR PARTICIPATION IN THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE PROGRAM.

WHITE-COLLAR CRIME PROGRAM

THE INVESTIGATION OF WHITE-COLLAR CRIME REMAINS ONE OF THE TOP NATIONAL PRIORITIES OF THE FBI. THIS PROGRAM COVERS A BROAD RANGE OF ACTIVITIES WHICH ARE GENERALLY CLASSIFIED AS GOVERNMENT FRAUD, ENVIRONMENTAL CRIMES, PUBLIC CORRUPTION, AND FINANCIAL CRIMES, INCLUDING FINANCIAL INSTITUTION OFFENSES, EACH OF WHICH DEALS WITH

ISSUES CRITICAL TO AMERICA'S CONTINUED CONFIDENCE IN THE INSTITUTIONS OF GOVERNMENT AND PRIVATE ENTERPRISE. THE MAGNITUDE OF WHITE-COLLAR CRIME IS SUCH THAT IT IS IMPOSSIBLE FOR THE FBI TO INVESTIGATE ALL OF THE WHITE-COLLAR CRIME CASES THAT COME TO OUR ATTENTION. WE MUST, THEREFORE, CONSTANTLY ANALYZE TRENDS SO AS TO DIRECT OUR RESOURCES TO MAXIMUM ADVANTAGE.

CASES SUCH AS "HEDGE CLIPPER" AND "SOUR MASH" HAVE EXPOSED CORRUPT TRADING PRACTICES IN THE COMMODITIES TRADING INDUSTRY IN CHICAGO, AND THE "ILLWIND" CASE, WHICH FOCUSED ON DEFENSE PROCUREMENT FRAUD, EACH STAND AS PROOF THAT THE FBI IS ON THE CUTTING EDGE OF LAW ENFORCEMENT IN THIS COUNTRY. IN FISCAL YEAR 1989, THE FBI INVESTIGATIONS WERE THE BASIS FOR OVER 4,500 CONVICTIONS AND PRETRIAL DIVERSIONS IN WHITE-COLLAR CRIME CASES. IN ADDITION, WHITE-COLLAR CRIME CASES RESULTED IN FINES, RECOVERIES, AND RESTITUTION TOTALLING $946 MILLION, ALONG WITH $24 MILLION IN FORFEITURES AND $328.4 MILLION IN SEIZURES. THIS IS A RETURN OF ALMOST SEVEN TO ONE OVER TOTAL COST OF THE WHITE-COLLAR CRIME PROGRAM.

HERE AGAIN, THE FBI'S STRATEGY IS WORKING AND WE ARE HAVING AN IMPACT. WE ARE CONTINUING INVESTIGATION OF SIGNIFICANT CASES IN EACH OF THE CATEGORIES OF WHITE-COLLAR CRIME AND ARE MOBILIZING RESOURCES TO VIGOROUSLY PURSUE FINANCIAL INSTITUTION FRAUDS. WE ARE REQUESTING AN INCREASE OF 440 POSITIONS, 110 WORKYEARS, AND FUNDING IN THE AMOUNT OF $12.4 MILLION FOR THE WHITE-COLLAR CRIME PROGRAMS.

ORGANIZED CRIME PROGRAM

THE FBI'S ORGANIZED CRIME PROGRAM CONTINUES TO COUNTER THE CRIMINAL ACTIVITIES OF LA COSA NOSTRA AND OTHER ORGANIZED CRIMINAL GROUPS. THE FBI ENTERPRISE

THEORY OF INVESTIGATION, WITH PROSECUTIONS UNDER BOTH THE CIVIL AND CRIMINAL PROVISIONS OF THE RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE, HAS PROVEN TO BE EXTREMELY EFFECTIVE. THE ORGANIZED CRIME NATIONAL STRATEGY, BASED ON CAREFUL ANALYSIS AND APPLICATION OF THE LAW, HAS ENABLED THE FBI TO HAVE A PROFOUND EFFECT UPON THESE CRIMINAL ORGANIZATIONS WHILE MINIMIZING THE RESOURCES REQUIRED TO DO SO.

IN FISCAL YEAR 1989, THE FBI'S ORGANIZED CRIME NATIONAL STRATEGY RESULTED IN THE INDICTMENT OR CONVICTION OF 18 MEMBERS OF LA COSA NOSTRA HIERARCHY. ADDITIONALLY, 643 CONVICTIONS WERE OBTAINED AND 510 INDICTMENTS WERE FILED AGAINST MEMBERS AND ASSOCIATES OF LA COSA NOSTRA. ADDITIONALLY, 119 DEFENDANTS WERE CHARGED IN CIVIL COMPLAINTS FILED UNDER THE RICO STATUTE, AND 20 JUDGMENTS WERE OBTAINED AGAINST LA COSA NOSTRA MEMBERS, UNIONS AND OTHERS. PROPERTY VALUED AT OVER $9 MILLION WAS SEIZED UTILIZING THE CIVIL PROVISIONS OF THE RICO STATUTE.

THESE INVESTIGATIONS AND CASES HAVE CAUSED SERIOUS DISRUPTION OF LA COSA NOSTRA ACTIVITIES IN PHILADELPHIA, BUFFALO, NEW YORK CITY, AND WEST VIRGINIA, AMONG OTHER PLACES. WE CAN HAVE THIS CONTINUING IMPACT BY AGGRESSIVE IMPLEMENTATION OF OUR NATIONAL STRATEGY.

IN ADDITION, TO APPLYING RESOURCES TO THE INVESTIGATION OF CRIMINAL ENTERPRISES OF LA COSA NOSTRA, WE ARE WITNESSING THE DYNAMIC EMERGENCE OF ASIAN GROUPS ENGAGED IN ORGANIZED CRIMINAL ACTIVITY, REQUIRING AN INCREASE OF 172 POSITIONS, 44 WORKYEARS, AND $4.1 MILLION FOR THE ORGANIZED CRIME PROGRAM IN ORDER TO RESPOND TO THE EMERGENCE OF ASIAN ORGANIZED CRIME.

THE CRIME PROBLEMS FOR WHICH THE FBI IS RESPONSIBLE ARE MANY AND VARIED, BUT THEY SHARE CERTAIN

CHARACTERISTICS. THEY ARE EACH, IN THEIR OWN RIGHT, COMPLEX AND SOPHISTICATED. THEY EACH REQUIRE COMPLEX AND SOPHISTICATED INVESTIGATIVE TECHNIQUES, AND THIS TRANSLATES INTO THE NEED FOR EXTENSIVE TECHNICAL SUPPORT FOR INITIATIVES WHICH ARE BASED UPON CAREFUL ANALYSIS AND CONSERVATIVE ESTIMATE.

THE PROGRAM ENHANCEMENTS WE ARE REQUESTING INVOLVE RESOURCES NEEDED TO CONTINUE INITIATIVES WHICH THE CONGRESS HAS SUPPORTED IN THE PAST. OVER 87 PERCENT OF THE PROGRAM INCREASES REQUESTED IN THIS BUDGET ARE CONCENTRATED IN THE FBI'S PRIORITY INVESTIGATIVE PROGRAMS. THE REMAINDER OF THE INCREASES ARE SPREAD AMONG THE VARIOUS INITIATIVES WHICH DIRECTLY SUPPORT THOSE INVESTIGATIVE PROGRAMS. I CANNOT OVERSTATE THE IMPORTANCE OF MAINTAINING A BALANCE IN THE MIX BETWEEN PERSONNEL AND EQUIPMENT IN THE FBI. CRITICAL PROGRAMS INCLUDING THE AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS PROGRAM, THE TECHNICAL FIELD SUPPORT AND EQUIPMENT PROGRAM, THE RECORDS MANAGEMENT PROGRAM, AND THE FORENSIC SERVICES-FEDERAL PROGRAM ARE ESSENTIAL TO THE CONTINUED SUCCESS OF THE FBI. IN THE FINAL ANALYSIS, THE WORK OF THE FBI INVOLVES COLLECTION, ANALYSIS, AND PRESERVATION OF INFORMATION ABOUT, OR PHYSICAL EVIDENCE OF, VIOLATIONS OF LAW. IF WE ARE UNABLE TO GATHER AND PROCESS INFORMATION AND EVIDENCE, ALL THE PLANNING IN THE WORLD IS OF LITTLE USE.

IN THE AGGREGATE, THIS BUDGET INCLUDES PROGRAM INCREASES OF 1,285 POSITIONS, 357 DIRECT WORKYEARS, AND FUNDING IN THE AMOUNT OF $81.8 MILLION.

THESE ARE OFFSET, IN PART, BY PROGRAM DECREASES OF 740 POSITIONS, 740 WORKYEARS, AND FUNDING IN THE AMOUNT OF $41.9 MILLION. MOST OF THIS REDUCTION, 514 POSITIONS, 514 WORKYEARS, AND $27.3 MILLION, IS INCLUDED IN ORDER TO COMPLY WITH DEFICIT REDUCTION TARGETS ESTABLISHED BY THE ADMINISTRATION. AN ADDITIONAL REDUCTION OF 146 POSITIONS, 146 WORKYEARS, AND $869,000 REFLECTS ANTICIPATED SAVINGS TO BE DERIVED FROM THE IMPLEMENTATION OF THE OFFICE OF MANAGEMENT AND BUDGET'S CIRCULAR NO. A-76. THE REMAINING PROGRAM DECREASES ARE INCLUDED TO ALLOW FOR FUNDING THE INCREASED COST OF ADMINISTRATIVELY UNCONTROLLABLE OVERTIME, AS I EXPLAINED EARLIER.

CONCLUSION

AT THE OUTSET OF MY REMARKS I TOUCHED BRIEFLY ON THE PRIORITY PROGRAMS OF THE FBI, AND SPOKE ABOUT THE STRATEGIES DESIGNED TO MAXIMIZE THE IMPACT OF THE RESOURCES ALLOCATED TO EACH. I ALSO SPOKE ABOUT THE MANY BASE LEVEL AND PROGRAM CHANGES WHICH ARE INCLUDED IN THIS BUDGET.

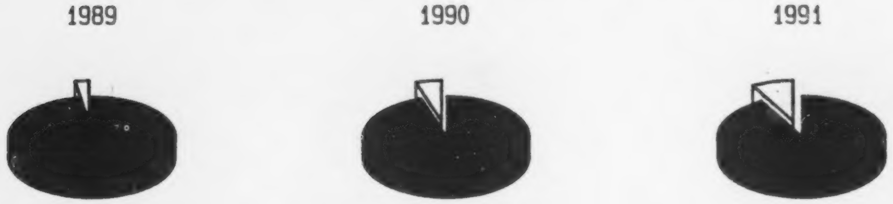
IF THE FBI IS TO CONTINUE TO SERVE THE AMERICAN PEOPLE IN THE WAY THEY HAVE COME TO EXPECT, WE MUST BE ABLE TO ATTRACT AND RETAIN PEOPLE WHO MEET RIGOROUS STANDARDS AND WHO CAN STAND UP TO THE DEMANDS MADE OF THEM. SUCH PEOPLE DESERVE TO BE COMPENSATED FAIRLY, AND THEY ALSO DESERVE THE TOOLS NECESSARY TO DO THE JOB.

THIS BUDGET REQUEST, IF FUNDED, WILL ENABLE THE FBI TO MEET OUR OBLIGATIONS AND TO UTILIZE THE PLANS THAT WE HAVE SO CAREFULLY DEVISED. I'M CONFIDENT THAT WE CAN DO THIS BECAUSE THE MEN AND WOMEN WHO MAKE UP THE FBI HAVE A STRONG, CONTINUING COMMITMENT TO DUTY AND A PASSION FOR EXCELLENCE.

I PRESENT THIS BUDGET REQUEST TO YOU TODAY, CERTAIN IN THE KNOWLEDGE THAT OUR MISSION IS CLEAR, THAT OUR STRATEGIES WORK AND THAT THE FBI WILL CONTINUE TO SERVE PROUDLY AND WELL, AND I ASK FOR YOUR SUPPORT.

Federal Bureau of Investigation
1991 Request to Congress

MAJOR FUNDING ABSORPTIONS ARE AFFECTING A GROWING SHARE OF THE FBI'S BUDGET



	1989	1990	1991
Appropriation:	$1,439,100,000	$1,499,444,000	$1,640,237,000
Absorptions:	36,575,000	72,657,000	130,077,000
Percent:	2.5%	4.8%	7.9%

FEDERAL BUREAU OF INVESTIGATION

Major Absorptions

	($ in Millions)
1989	
4.1% pay increase absorption	$27.755
GSA rent increase	8.820
Subtotal	$36.575
1990	
3.6% pay increase	$29.216
ERF construction (-7.5 TFS&E & -7.5 DTP)	15.000
GRH sequestration	20.941
User Fee cut absorption	7.500
Subtotal	$72.657
1991	
Administratively Uncontrollable Overtime	$41.979
GRH Sequestration	20.941
Deficit reductions	29.166
WMFO	10.000
ERF nonrecurring	15.000
4.0% pay increase	12.991
Subtotal	$130.077
TOTAL 1989 to 1991	$239.309

FBI WHITE-COLLAR CRIME INVESTIGATIONS

Senator HOLLINGS. Very good, sir. Just as an old defense lawyer, Judge Sessions, you notice on page 8 a statement there, "The magnitude of white-collar crime is such that it is impossible for the FBI to investigate all white-collar crime cases that come to our attention." That is a dangerous statement.

If I was defending Defendant Jones and you had Agent Smith on the stand, I would say, "Why are you so intent on this case, Mr. Smith?"

And he would say, "Oh, we take all the cases."

I would say:

> No, no; your Director of the FBI in Washington says they are making selective investigations, that they really can't get to them all. In fact, this one is in South Carolina. Could it be that he is from Texas where they have got 50 percent of the white-collar crime in S&L's and here in South Carolina, he is bringing these cases? Why don't you go back out? Why don't you go on back out to Texas and find some cases?

Judge SESSIONS. Of course, the selective prosecution in question may be de minimus in that circumstance. The FBI is actively pursuing cases that have been uncovered, but must focus limited resources on the prosecution of large-scale offenders before pursuing small-scale offenders. If we were selectively prosecuting cases, then we would be choosing to pursue only some of the cases that had been uncovered.

Senator HOLLINGS. A lot of time the agents' credibility is blemished. You were a judge on the bench; you know exactly what I am getting at.

Judge SESSIONS. It is difficult, Mr. Chairman, in the white-collar crime area. For instance, in bank frauds and embezzlements, there are a tremendous number of cases that we cannot address. We have spoken to the House Banking Committee about unaddressed cases and are concerned about our lack of resources.

RESOURCES FOR WHITE-COLLAR CRIME INVESTIGATION CASES

Senator HOLLINGS. As an appropriator, now, I would ask, then, how much money do you need to get to all of them?

Judge SESSIONS. I would have to supply that for the record and to think it through. I can give you some indication. As I testified before the House Banking Committee, I advised the committee that there are 20,153 referrals pertaining to bank and savings and loan bank fraud and embezzlement matters under $100,000. There are an additional 778 referrals involving amounts up to $1 million and 231 referrals involving amounts over $1 million.

We have about 7,000 cases currently under investigation with the resources that we have. We take cases as they come, and there is no question about it, there are a number of banks and savings and loans that are our responsibility, but we cannot address all of the referrals.

Senator HOLLINGS. Specifically, I think you had a survey where you had a report of 2,400 inactive and out of the 2,400, I think they said 1,300 were major cases in the survey of December 7, 1989. Specifically, it is a comparison of March 1, 1989, Department of Justice survey of FBI divisions, U.S. attorney offices on additional personnel needs for financial institutions, fraud and embezzlement cases were the Attorney General's December 7, 1989, actual allocation of such personnel.

You see, I think all of us on the committee want to know how do we put money in the bill to address that need that you find in this survey; 1,300 major cases lie fallow because they don't have the personnel. How much more do I want to put to that? I will dovetail that right in with the chart. How much more would it take?

How do you get to the 1,300 major cases? How do we get you back up? How much in dollars and cents? We want to know. You can submit it for the record if you haven't factored it out, but you can see right now, we are not going to cut agents. But with the surveys and pleas and $42 million AUO that you had to absorb, we have got a little Appropriation Committee problem here.

[The information follows:]

Financial Institution Fraud Investigations

On December 7, 1989, the Attorney General announced a 27-city attack on savings and loan fraud through the deployment of more than 400 additional Federal prosecutors, FBI investigators, and accounting personnel. The increase, funded under the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, provided the FBI with an additional 153 agents, 92 support positions and 100 accounting technicians. In addition, the FBI diverted 49 agents from other programs to this initiative, providing a total increase of 202 agents.

The FBI currently has 7,000 savings and loan fraud cases under investigation; however, 1,300 major cases involving over $100,000 each are inactive because of limited personnel resources. Based on a field survey conducted in 1989, the FBI estimated it would need an additional 425 agents to conduct financial institution fraud investigations. The FBI will add a total of 202 agents during 1990, which would leave a need for approximately 200 agents. However, in order to accurately judge the agent resources necessary to investigate the 1,300 unaddressed cases, further analysis would be necessary to assess the complexity and time requirements of the cases.

ALLOCATION OF AGENTS INVESTIGATING SAVINGS AND LOAN FRAUD

Judge Sessions. If I tell you what we have done, it might give you a precurser or an indication of the manner to proceed. We have added 202 agents under the savings and loan initiative.

Senator Hollings. All right.

Judge Sessions. I will supply information detailing how these agents have been disbursed for the record.

[The information follows:]

White-Collar Crime Investigations

The following chart illustrates the allocation for fiscal year 1990 of the total 202 agents and 100 accounting technicians pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 to 27 field offices which were determined to have the most pressing need.

FBI divisions	Allocated special agents	Allocated accounting technicians
Anchorage	2	1
Atlanta	3	1
Boston	3	1
Chicago	4	2
Cleveland	2	1
Dallas	37	17

FBI divisions	Allocated special agents	Allocated accounting technicians
Denver	8	4
El Paso	1	0
Houston	27	14
Kansas	10	5
Little Rock	4	2
Los Angeles	27	14
Memphis	1	1
Miami	4	3
Minneapolis	5	2
Newark	3	3
New Orleans	12	5
New York	10	4
Oklahoma City	10	4
Omaha	4	2
Philadelphia	1	1
Phoenix	6	3
Sacramento	1	1
San Antonio	8	4
San Francisco	4	3
Seattle	3	1
Tampa	1	1
Financial Crimes Unit, White-Collar Crimes Section, FBI Headquarters	1	0
Total	202	100

ADDITIONAL RESOURCES NECESSARY

Senator HOLLINGS. All right, sir.

Judge SESSIONS. That is in addition to 100 accounting technicians that have been added to that effort. That brings us up from about 400 people associated with white-collar crime, bank fraud, and embezzlement matters to about 600 people in 1 year. With these additional people, we expect to make some progress on these referrals that I mentioned. However, you will see that it will still require a considerable number of additional agents.

I think we can work that out with the Department of Justice and return with our 1992 request systematically to add agents to attack those problems.

The wisdom of the Financial Institutions Reform, Recovery and Enforcement Act [FIRREA] in making it possible for there to be an extended statute of limitations gives everyone in the Department of Justice more time to work on bank fraud and embezzlement matters, because it doubles the statute of limitations. This is very meaningful to me and will enable us to systematically attack those problems. Obviously, it is not unlike drugs.

When you know you only are attacking about 50 percent of what actually has been identified, it is frustrating. To successfully address this problem we have to gain additional agents, train them, and then bring them on board.

Senator HOLLINGS. You see what we are getting at.

Judge SESSIONS. Yes, sir.

Senator HOLLINGS. What I would do is I would ask the staff to work with your office and just take the *x* number of agents necessary to get us at least up to the present year's level and put a dollar mark by that and see how much we need to add to this and perhaps put it in savings and loans. Yes; crime and drugs, I should say, is our No. 1 problem.

All surveys show that, but yet there is a public understanding of appreciation that the ones you are getting at, I hope, and as I notice, are the organized ones, and that is what you have got to get at, the drug supplies and what-have-you.

The drug users on the demand side are only going to be helped through education. That includes education of the public generally to the effect that they are not all immoral, illegal wretches. Over 50 percent of the drug users really come about through psychological, physiological, mental defects, other things, seizure attacks, those kinds of things, and then once they get to feel good on those drugs, they take them again and again, and they get hooked.

So the crime in drugs, the FBI's focus is exactly right, but as far as really the most serious crime that we know of and the public sees us paying out to cover the costs and the amount goes up to $350 billion, and now it is up to $450 billion, and they want to know, "What is happening and why aren't they doing more about it?" That is already on the floor in this urgent supplemental bill we have been discussing for the last 10 days.

I would hope we would put a greater effort on these S&L cases and at no time have that kind of survey available without an answer to the effect that you have got 1,300 major cases in S&L's that we are not working on because we are short on personnel.

Judge SESSIONS. It is my understanding that the application by the Department of Justice is 118 attorneys. These attorneys, the 202 FBI agents, and the 100 accounting technicians should make a considerable dent in that backlog, Mr. Chairman.

Senator HOLLINGS. Very good.

I yield to Senator Rudman.

TRAINING OF FBI SPECIAL AGENTS FOR WHITE-COLLAR CRIME INVESTIGATIONS

Senator RUDMAN. Judge Sessions, I want to pursue a little bit the line of questioning that the chairman was following, and that is the issue of how many agents it takes to solve a particular problem. In particular, I am interested in savings and loans.

I would assume, from my prior experiences in life, that you just can't hire agents with their normal amount of training to pursue white-collar crime in the area of an S&L fraud. I take it that is very sophisticated, and a very difficult to pin down kind of case. Am I correct?

Judge SESSIONS. It is, but we do the training that is required, and we also hire individuals with the kind of backgrounds that are compatible with our needs, such as those with the accounting background, the legal background, and the financial background. This enables us to bring agents on board quickly and provide them with supplemental training. Then these agents spend about 1 year with a very experienced agent or a group of agents to ensure that they are ready and aware of the problems that exist.

SPECIALIZED AGENT TRAINING TO DETECT SAVINGS AND LOAN, BANK FRAUD, AND EMBEZZLEMENT

Senator RUDMAN. When you look at the problems facing the FBI today versus the time that I worked a lot with the Bureau 10 to 15 years ago they are different. To bring an agent out of your academy and put them in a field office some place and work with bank robbery, auto theft, mail fraud, and so forth, those people, if they are bright with good legal/accounting training, they can get up to speed pretty quickly.

In fact, that is what you did in States like mine; you sent a lot of young agents there because the kind of crime which took place there made it a good training place. But it seems to me the kind of case that we are talking about now—and I know a fair amount of what is going on in this area—is a very complex kind of case. The fact that you have 20,000 referrals doesn't necessarily mean that you have 20,000 cases.

Somebody has to go in and do a cut. Every bad loan isn't an indictable offense, although to hear people talk about it, you would think that with every loan that went bad, there was fraud behind it.

What kind of training are you able to give these new, young agents to get them up to speed so they can be fairly sophisticated in looking through the paper trails involved with these bad loans.

Judge SESSIONS. You are precisely on target and exactly correct. The training is encompassed into the framework of what I discussed. The basic training includes 16 weeks at the FBI Academy, specialized training in connection with savings and loans failures, bank fraud, embezzlement-type cases, and a year of working directly with an agent or a group of agents who have the kind of experience that is necessary to address those major cases.

Senator RUDMAN. Where is that specialized training taking place?

Judge SESSIONS. It takes place both at the FBI Academy and Quantico and in the field at in-service training.

Mr. Clarke may be able to expand on that.

Mr. CLARKE. We are utilizing our experience with bank failure investigations which go back 8 to 10 years. We started our first major investigation in Oklahoma City, and then we had major cases in Tennessee, Kentucky, Texas, and southern California. This is an evolving process, and you are quite right that it is very complex.

The FBI is part of the equation, a major part on the investigative side, as is the prosecutor whom is essential in the prosecution and in acquiring the necessary documents. What we have done is utilize individuals whom have had experience in these investigations. We place them in strategic locations to oversee bank fraud and embezzlement investigations.

We have experienced people. Part of the process of developing this experience is to move agents to different locations to actually oversee and give the guidance and direction to these investigations. As we develop new techniques and discover new areas that need to be explored, we will bring representatives from the field offices that have these major ongoing cases and provide them with very specialized training which they can take and infuse into ongoing investigations.

Senator RUDMAN. When you refer to specialized training, I take it that you train these people in examining financial documents to be able to assess whether or not there have been improprieties under Federal law in terms of how loans were made, who they were made to, whether they were fraudulently secured, and so on?

Mr. CLARKE. Exactly. You will find different techniques that individuals will use to disguise their transactions. As we discover ways that they have developed to disguise transactions, we want to ensure that all of our agents are familiar with procedures to discern whether there may be fraud involved.

For example, what are the key things to be looking for? What are the types of transactions that should be recognized indicia that cause the investigator to focus on that particular transaction?

Senator RUDMAN. When you go after these cases, and I have a special reason for asking this, because I have an interest in seeing what we can do to help the Bureau in following the line of the chairman, when you train people to look at these kinds of cases, take the hypothetical of a loan that is made by a bank president of an S&L to someone who is a friend, not a board member, but a friend, totally unsecured, a large amount of money for some development with no evidence of kick backs disguised or overtly to the bank president. That, of course, on the face of it might not be a crime.

But then you have to get behind that to look at all the financial records to see whether or not there was a financial association that would make it a crime. Is that the kind of training you give agents?

Mr. CLARKE. Absolutely. You will see situations just like that where the property that has been pledged has been turned over three or four times within a short period of time. This will cause the value to escalate and cause the investigator to say, "Let's take a look at this and see if, in fact, there is a true appreciation or is this merely a paper appreciation that has been staged."

You also may see a series of fictitious transactions which are actually used to sustain credit or raise money. They will take the assets of one bank and transfer them from one bank to another. So you are right; you have to go behind some transactions to determine if there were other transactions leading up to particular transactions which caused the failure.

Senator RUDMAN. Are you using some of the latest techniques in matrixing computer information to try to pull all this together?

Mr. CLARKE. Yes, exactly.

FBI PROGRAM DECREASES DUE TO INCREASED AUO COSTS FOR FISCAL YEAR 1991

Senator RUDMAN. Judge, let me ask you, on page 12 of your statement you note that your requested increases are "offset, in part, by program decreases of 740 positions" et cetera, et cetera, how did you do that? Where did you take that from?

Judge SESSIONS. Did you say page 12?

Senator RUDMAN. Decreases I am talking about.

Judge **Sessions**. The program decreases came from the adjustment to fund increased cost of administratively uncontrollable overtime, from the U.S. attorneys applicant investigations, from A-76, and from the 1991 permanent sequestration. Those changes related to administratively uncontrollable overtime total $41.9 million.

What we tried to do was to be sure that, in the funding of the administratively uncontrollable overtime, which we discussed earlier, we were able to meet the underfunding. The method that we agreed with the Department of Justice and with the Office of Management and Budget was satisfactory to us to ensure that we would be able to bring those people on board during the year.

LAW ENFORCEMENT PAY DISPARITY DUE TO ADMINISTRATIVELY UNCONTROLLABLE OVERTIME

Senator **Rudman**. Mr. Chairman, as you know, we always hear from various Members of the Congress who have legitimate needs in their States. I think it is the height of irresponsibility to mandate a program of *x* millions of dollars and not fund it.

We order the Bureau to do something; we don't give them the money to do it; they are bound by law. They don't have any choice.

Judge **Sessions**. I had another concern along that line, Senator. That was that the legislation giving the administratively uncontrollable overtime increase might be perceived as addressing the needs of law enforcement; however, it has not begun to do that.

You have Senate bill 2250 which incorporates the work of the National Advisory Commission on Law Enforcement. This, again, is a comprehensive approach to some of the problems that Federal law enforcement has because of the disparity between Federal pay and pay that can be earned in other law enforcement agencies throughout the country. So it is comprehensive.

It is important. An increase in administratively uncontrollable overtime, even though it is $42 million, which is a lot of money, is still not adequate to do the tasks that need to be done.

Senator **Rudman**. We understand that. Unfortunately, what happens is you get piecemeal solutions. For example, someone can put together a coalition in the Senate to favor this group of agents, and then somebody says, "Wait a minute; the cost of living in Boston is as high as it is for an agent living in Patterson, NJ, so we want to expand the proposal."

Then you say, "Look at the cost of living in Los Angeles."

Before you are done, you have a patchwork quilt. It is a typical example of congressional micromanagement, of Congress trying to get into the executive branch and doing what you ought to do. When you don't do it, which is not your fault—that comes from OMB—we do it, and we end up: (a) with a patchwork quilt; (b) with less money; and (c) with your coming in here today justifiably and saying, "Look what you did to us, and this is how we have to get out of it."

I would like a comprehensive plan from the Bureau as to what you need to retain top people, and then people are either willing to pay for it, or they are not. If they are not, then they will pay the political consequences for it.

Judge **Sessions**. Senate bill 2250 will go a long way toward improving the situation.

RELOCATION OF IDENTIFICATION DIVISION

Senator **Rudman**. I agree. I don't want to take a lot more time, because we have a lot of members here this morning, which I am pleased with. Sometimes Senator Hollings and I are kind of lonely around here. But concerning fingerprint identification, the supplemental includes $185 million for the FBI's fingerprint identification automation project. My question is: What is the status of that operation, and the status of relocation plans?

Judge **Sessions**. First of all, let me go back and say that this circumstance has been with us for a number of years. The possibility of relocating the Identification Division was first considered in 1979. It progressed to 1981 but was found not to be economically feasible for us to be able to do it. The tremendous problem we have is the turnover in personnel. High turnover is a result of lower-grade employees unable to subsist in a high cost-of-living area, and our inability to attract the technicians we need because of low pay. Those factors led us to say, "Find another area that can give you these requirements and fulfill these needs."

So the relocation came alive again in 1985 under Director Webster. I have been trying to bring the FBI back into the center of the identification picture. To accomplish this, it was absolutely essential that we have some mechanism that could deal with the automated latent systems and the automated fingerprint identification systems that were beginning to spring up all around the country. These systems were leaving the FBI's technology behind, so the ability to possess a first-rate identification system, not just for some States and some localities, but for all 50, was absolutely essential.

That is when the FBI began to reconsider relocation; that is, to coordinate not only the move that would allow us to hire trained personnel, but provide the resources and the technology to train people as well as meet automated identification requirements. This brought us to the conclusion that we need to relocate, and we are now in the process of having a relocation study completed by an outside firm. This study will provide us with the estimates that will be the basis for seeking to actually move and permanently take the identification function out of FBI headquarters.

Senator **Rudman**. I take it the problem you have is that those are relatively lower paying jobs, and the District of Columbia is a very high cost area to live; is that correct?

Judge **Sessions**. That is one of the principal causes of turnover, yes.

AUTOMATED LATENT FINGERPRINT IDENTIFICATION SYSTEM

Senator **Rudman**. The last question is, if the State police in the the State of New Hampshire were to send you a print today in a major case, how long would it take to tell them, if that print was on file, who it belonged to?

Judge **Sessions**. Probably 6 weeks.

Senator **Rudman**. I think that is shocking.

Senator **Hollings**. Yes.

Senator **Rudman**. I wonder how many people in Congress know that. I knew that. I knew the answer to the question.

Senator **Bumpers**. Warren, ask the question again. I'm sorry.

Senator **Rudman**. If the State police in New Hampshire had, let's say, a horrible homicide last night, beautiful fingerprints on the window coming into the house; looked at the prints; got them down with their electronic beams to the Bureau or actually, sent them down Federal Express with the originals; gave them to the Bureau and said, "Who does that print belong to?" and that individual was in the FBI file, it would take them 6 weeks to tell the New Hampshire State Police that that was John Doe.

Now, they might be extraditable if it was a horrible case or something, but the fact is, it is a 6-week delay.

Judge **Sessions**. If I may take the affirmative side of that, and this is a real example——

Senator **Rudman**. I am not criticizing you for it. I think it is lack of support from up here, but that is the fact.

Judge **Sessions**. A circumstance in Florida arose with a need to identify an individual. When the fingerprints were applied against the Florida automated latent system, the system did not produce a result, so the fingerprints were sent to California, which also has an automated latent system, but a limited data base, as does Florida, for identification.

Senator **Rudman**. That is the problem.

Judge **Sessions**. It happened that this individual was found, and as it turned out, that individual happened to be 1 of the 10 most wanted persons on the FBI's list.

If we had had the automated latent capability, we would have, of course, been able, from any State in the Union, to identify the fingerprints.

Senator **Rudman**. Of course, the problem is, a lot of people have not had law enforcement training and do not understand. The only thing the States have on file are prints of people who have committed crimes in those States.

Judge **Sessions**. That is correct.

Senator **Rudman**. Or incidentally, those prints came into those States based on ancillary activities that put them on file.

Mr. Chairman, we are talking about drug crime and all the crime we have, yet if we can't even get a fingerprint system so you can get rapid response from a national data base, then it seems to me that we are really blowing a lot of smoke.

MURDER OF MARYLAND STATE TROOPER

Senator **Bumpers**. Will the Senator yield?

Senator **Rudman**. Sure, I am done.

Senator **Bumpers**. I was very impressed, Judge, 2 weeks ago with the rapidity with which these people who killed this Maryland State trooper were arrested. That seemed to have happened almost in a matter of 3 or 4 days. Was the Bureau involved in that?

Judge **Sessions**. I don't know that we were. We were involved initially.

Senator BUMPERS. Yes; that seems like a pure case of getting some good fingerprints and finding and identifying those people and getting them arrested.

Judge SESSIONS. Mr. York, who is the head of the Identification Division, is here and I would like to have him respond to that.

Senator BUMPERS. I would like to hear that, Warren, with your approval.

Senator RUDMAN. That is fine. I think it is a very important issue.

Mr. YORK. We did conduct a search of the crime scene fingerprints found in that case. We found nothing. The New York system did identify the person who left the prints at the scene of the crime. However, we did find that we did not have that in our data base.

Senator BUMPERS. One of them was out on bail at the time, was he not?

Mr. YORK. I believe so.

Senator HOLLINGS. One of them.

Mr. YORK. If we had had that in our data base as a matter of fact, we still may not have been able to identify him.

Senator BUMPERS. That sounds like a real tragedy to me.

Senator RUDMAN. Here is the point: The largest data base of fingerprints in the world is probably within the FBI.

Judge SESSIONS. I apologize. I was not listening.

Senator RUDMAN. The largest data base of fingerprints in the world is in the FBI.

Judge SESSIONS. That is correct, but the problem is the proliferation of other systems that are not tied together or have single data bases that are not national in character.

Senator RUDMAN. You still have the largest data base?

Judge SESSIONS. Yes.

Senator RUDMAN. So the greatest chance of getting a hit, as they call it, on a print search is with their data base, because the likelihood that it is in the FBI system is greater than with any other data base. I happen to want to take some initiative this year.

Senator BUMPERS. What would it cost to do that?

Senator RUDMAN. We are going to talk about that. We are going to have questions for the record on that. But aside from OMB and everything else, if there is nothing else we do this year, we ought to provide funds to develop an updated fingerprint identification facility.

SUPPORT FOR THE FBI

Senator HOLLINGS. Senator Gramm.

Senator GRAMM. Mr. Chairman, I will be brief. I would just like to say, Judge, I am proud of the job that you have done. I am proud that you are from my great State, and it shows in what the FBI is doing. There is not an agency of Government that I support more strongly than your agency.

Judge SESSIONS. Thank you. I am grateful.

Senator GRAMM. I was unhappy in those waning years of the Reagan administration, when the President was asking for more money for the FBI than Congress was providing. That has happily come to an end. Last year, we provided the full level of funding for the FBI and DEA, and I am hopeful that at a minimum, we will do that this year. I can assure you I will support it.

Judge **Sessions**. Thank you, sir.

Senator **Gramm**. I would be very happy to try to support any proposals you have to deal with the problem that Warren raised. By taking the needed money away from some lower priority use, and there are many low priority items within this great expensive Government of ours.

So I just want to congratulate you and DEA on the great job that you are doing and commit my total and absolute support to try to give you the tools you need to get the job done.

Judge **Sessions**. Thank you, Senator.

Senator **Hollings**. Thank you.

Senator Adams.

ILLEGAL LABORATORIES EMERGING IN WEST

Senator **Adams**. Thank you, Mr. Chairman. Judge Sessions, I feel the same way, and have told your predecessor, Judge Webster, the same thing. I support the chairman's statement that we certainly cannot have a reduction in the number of FBI agents.

At the outset, I want to express my appreciation for the fact that the Drug Enforcement Administration recently announced its intention to send two additional agents to the Yakima Valley area of Washington State.

As you know, my entire State is facing a tremendous problem from the black tar heroin and cocaine coming through the pipeline that begins in Yakima. We are most grateful for that additional Federal support and hope that more will be forthcoming.

I am also interested in hearing what role the DEA intends to play in interdicting the supply of methamphetamine or ice that is being manufactured in illegal laboratories that are springing up around this country, particularly in our rural areas throughout the western United States.

In my State alone, 93 labs were seized last year, ranking us fourth nationally behind Texas, California, and Oregon. A recent drug lab seizure in Snohomish County, WA, took place in a relatively affluent neighborhood.

A recent study released by the Department of Health and Human Services characterizes this smokable product as our next national crisis in the area of drug use.

I hope that DEA is developing a strategy for both eliminating the laboratories and tracing the supply of the various chemicals used in processing ice. It seems to me that an aggressive Federal system of tracking the sale and distribution of these processing chemicals is an essential first step in the interdiction of ice. I hope the DEA will address this concern and indicate whether additional resources are needed to assist in this effort.

I want to state this both to you, and I know Mr. Burke is in the office, that we have had, and I have brought to the attention of the committee, problems beginning to rise severely in the rural areas, and I mention, particularly, the city of Yakima in the State of Washington, as being the end of the pipe line for black tar and for cocaine coming up, which is a major enterprise, and therefore, it ties in with both the FBI and the DEA operation.

I want to thank Mr. Burke for sending, and I will do that before he even arrives here, as the DEA chief, for sending additional agents and getting people into the field. I am hopeful that as the chairman had asked and had stated, that you are concentrating on this. As a former U.S. attorney and as Senator Rudman said, we understand the necessity for focusing resources selectively.

I hope we are not still doing car thefts and so on as we did 30 years ago in order to bring the statistics up at the end of the year. I hope that practice died a long time ago.

But I do feel that. The second point I wanted to make out of it is, we are now having an enormous problem with the development of methamphetamine labs. We had 93 of them raided in the State. We have got more methamphetamine labs than we have treatment beds in the State. The use of those supplies is a white-collar system and is an interdiction system that the FBI is particularly qualified to handle.

I want to say, Mr. Chairman, I certainly support your statement for additional agents. Senator Rudman, it has always been my feeling since the time that we were trying in the eighties to do something about the serial killers in the Pacific Northwest that were moving from Oregon, Washington, and elsewhere, that the State systems have to have a basic referral into the FBI which can be kept as a separate bank, if they want, in the computerized system, in addition to their regular bank that they are doing, but there has to be a tying together of the State systems.

I hope that is accomplished this year. I want to join with you when you start to do that, because we have had the problem that we chased one man, we, I say; the State police did, in the *Bundy* case through four States and missed him twice because there was not a tying together of the fingerprints. Finally, he was found in Florida, in each case, terrible crimes. We know of your agency as the only one to tie this identification together. So I hope Senator Rudman follows it.

Mr. Chairman, thank you very much. I want to thank Mr. Burke for those two agents.

Senator HOLLINGS. Thank you.

Senator Bumpers.

SAVINGS AND LOAN INVESTIGATIONS

Senator BUMPERS. Thank you, Mr. Chairman. Let me just follow up on something Senator Rudman mentioned earlier, Judge. I was amazed that you had over 20,000 referrals on these S&L cases. I heard you say on "McNeil-Lehrer" recently that you had over 7,000 cases under active investigation.

Judge SESSIONS. That is correct.

Senator BUMPERS. Are those institutions or are those numbers of individuals?

Judge SESSIONS. Those are numbers of referrals.

Senator BUMPERS. Either?

Judge **Sessions**. They are, obviously, from a smaller number of institutions. There are some 530 institutions that fall into that category.

Senator **Bumpers**. How many people would you say, just offhand, are assigned to those 7,000 cases?

Judge **Sessions**. There are now about 400 agents, perhaps a little less, about 398, I believe, Senator Bumpers, that are assigned. We will add 202, which will bring us to approximately 600 agents.

Senator **Bumpers**. Let me make one other point. Yesterday morning at breakfast, Mrs. Bumpers read this story on S&L fraud and how the figures are going through the roof, $500 billion and so on. She said, "Why don't you speak out more on that? People in this country are just so upset about that," and blah blah blah. [Laughter.]

Senator **Rudman**. We will make sure the record is properly corrected.

Senator **Bumpers**. Mr. Chairman, I ask unanimous consent that "blah, blah, blah" be stricken. [Laughter.]

Senator **Hollings**. If we grant that, then everything I say will be stricken.

Senator **Bumpers**. So I spent more time than usual at breakfast explaining that issue, but the point is, and Senator Rudman has already made it very cogently, that is, every bad loan is not a fraud case.

Judge **Sessions**. That is correct.

REFERRALS FROM SAVINGS AND LOAN INVESTIGATIONS

Senator **Bumpers**. I am not being defensive, but the *Charles Keating* case, of course, has made everybody in this country assume that $500 billion has been taken out of the taxpayers' pockets by fraud. The truth of the matter is, this all started when interest rates were 20 and 22 percent. I was paying 5½ percent interest on my home in Arkansas, and I still am, near where your father lives. They were paying 15 percent interest on small CD's and getting 5½ percent from me, and that is the reason we deregulated them. We wanted to give them a chance.

In some instances, deregulation, obviously turned out to be a case of a lot of greed and a lot of bad investments. We allowed them to invest directly, and soon this house of cards began to fall. I know there is a lot of fraud, and the truth is we don't have a board that is capable of dealing with the disposition of about $400 billion in assets, either.

In my opinion, the American public could be saved almost $100 billion by hiring competent assets managers. That is a very technical field. We are doing it like it is some kind of an auction, a fire sale.

Another reason I don't speak out about this more, even in my home State, is because every time I do or Senator Hollings does, these people go down and start taking their money out again. They've seen enough of these stories.

What that does is exacerbate this problem. I am not defending the people who engage in fraud, and God knows, there is plenty of it, but the assumption is that somehow this whole thing, this whole $500 billion mess, was lost through fraud.

Judge SESSIONS. I think you are right. You must resist the temptation to quantify it as a particular percentage of the total loss, and yet I think that the faith of the American people in financial institutions, underlining what you have said, that is, that they rely upon an institution being well run. If there is criminality involved, it should be precluded that it is our responsibility. On those referrals, we must deal with them in a criminal fashion so the American public has the confidence that there will be a judgment day and that the persons involved will be brought to the bar of justice.

Senator BUMPERS. I know that many of those cases, just in discussions with people who deal in it every day, are marginal.

You start looking for fraud simply because something untoward happened.

Judge SESSIONS. The agency referrals, of course, come after the examination of thousands of different loans and come to us with special referrals, believing that there are indicia of fraud, embezzlement, or criminal activity, and so those referrals have first been screened before they come to us. The chances are, in a referral, that there is a fairly high percentage of criminal activity, but those are, of course, the referrals.

The U.S. attorney then must examine referrals with us and decide whether to go forward with them.

Senator BUMPERS. Judge, out of the 23,000 referrals, you say you have 7,000 active. Does that mean you have discarded the rest of them or you have not gotten to them?

Judge SESSIONS. No; we just have not gotten to them. I enumerated for the record a short while ago the actual number of those referrals. Under $100,000, there were something like 20,153 referrals. Up to $1 million there were 778 additional ones. Over $1 million, there were 231. This gives you an indication of the number of referrals coming in.

FBI SEIZURES FOR FISCAL YEAR 1989 AND ASSETS DISPOSAL

Senator BUMPERS. Shifting gears just a minute, Mr. Burke from DEA is going to testify in a little bit. In 1989, the DEA seized 900 million dollars' worth of assets owned by traffickers. How much did the FBI seize?

Judge SESSIONS. The FBI seized more than $125 million, I believe. I will provide that figure for the record.

[The information follows:]

FBI SEIZURES FOR FISCAL YEAR 1989 AND DISPOSAL OF ASSETS

In 1989, the FBI seized more than $125 million worth of assets owned specifically by drug traffickers, while forfeitures from drug traffickers totaled more than $45 million. The total value of all assets seized by the FBI during 1989 was $469,364,291. The value of all assets forfeited was $73,497,197.

The following chart delineates both forfeitures and seizures by investigative program for 1989:

FISCAL YEAR 1989

	Forfeitures	Seizures
Drugs	$45,197,921	$125,453,787
White-collar crime	24,382,375	328,445,202
Organized crime	1,794,633	9,303,828
General property crime	371,926	732,833
Fugitives	360,946	785,095
Personal crime	142,832	431,902
General government crime	3,565	66,111
Miscellaneous	1,242,999	4,145,533
Total	73,497,197	469,364,291

SEIZED ASSETS MANAGEMENT

Senator BUMPERS. Briefly, what is the procedure for disposing of those assets?

Judge SESSIONS. It is done by the U.S. Marshals Service, who takes those assets and then finds, either at auction or otherwise, an appropriate buyer. I believe that is the procedure they utilize.

I could find out, again for the record, precisely how it is done, but that is the general overlay.

Senator BUMPERS. That is good enough. I was just curious as to how that would be done.

Judge SESSIONS. Yes; the U.S. Marshals Service, under the Department of Justice, is responsible for that, and there is also an Assets Forfeiture Office in the Department of Justice unit that actually oversees the disposal of assets very carefully.

Senator HOLLINGS. Which does an outstanding job, in comparison, for example, with the Customs Service, who handles their own seizure sales, and came up with nothing. We actually are making money using the Marshals Service.

INTERACTION WITH OFFICES OF INSPECTORS GENERAL

Senator BUMPERS. That might be worth considering when we go to markup on that very point.

Judge, how well are you working with the inspector generals in Government?

Judge SESSIONS. We have a splendid relationship with them, and we do a substantial amount of intergroup training and work with them on their referrals. They are extremely important to us, and we feel our cooperation is very strong.

REIMBURSEMENT FOR U.S. ATTORNEY BACKGROUND INVESTIGATIONS

Senator BUMPERS. One final question. On page 5 of your testimony, there is something that I don't understand. You point out that you are seeking permission to charge the U.S. attorneys, or seek reimbursement for background investigations.

Judge SESSIONS. That is correct.

Senator BUMPERS. Explain what that is and why you are asking for that.

Judge **Sessions**. It was one of the methods by which we funded administratively uncontrollable overtime. That was negotiated by Mr. Clarke, who may be able to expand on that.

Mr. **Clarke**. We do the background investigations on U.S. attorneys, assistant U.S. attorneys, and support personnel in those offices, with the latter being conducted on a reimbursable basis. Previously, it was done with our existing resources; however, when we were looking for ways to fund this increase, one of the options we explored was transferring some of the additional funding that was going to the Executive Office of the U.S. Attorneys to the FBI to reimburse us for the expenses involved with conducting those background investigations. A little over $2 million was set aside through negotiations with the Department of Justice to reimburse the FBI for those background investigations.

PROPOSED CHANGES TO THE EXCLUSIONARY RULE ON SEARCH AND SEIZURE

Senator **Bumpers**. We are getting ready to add 800 more U.S. attorneys, so you have got a lot of background work coming up.

Judge, just briefly, are you familiar with Senator Thurmond's bill on the exclusionary rule?

Judge **Sessions**. No, sir; I am not, but I will be glad to be educated.

Senator **Bumpers**. You are a former judge, so you will have some appreciation of this. The court, as you know, not too long ago said that if a law enforcement officer has a warrant and he makes a search and possible seizure and it turns out later that the warrant was invalid or improperly obtained, the court upheld the use of that evidence at trial because the officer was acting in good faith because he had a warrant.

Senator Thurmond wants to go further and say that if any officer can prove after the fact that he was operating in good faith, then he may search and seize without a warrant. Would you support that?

Judge **Sessions**. I don't know what the position will be of the Department of Justice, Senator Bumpers, and I know there is a multifaceted problem, and a good-faith exception has always been extremely difficult for both the courts to handle and for the American public to understand.

As a general proposition, my belief is that as far as we can go to support the need for and gain the court's oversight of search and seizures would be beneficial to both law enforcement and to the confidence of the American public.

At the same time, I understand that there is a greatly increased professionalization of law enforcement activities and of law enforcement personnel. You are not looking at the same officer in a police department today that you were maybe 20 years ago. They are better trained, more competent, and more knowledgeable of the law, so that they can carry out the proper functions with the proper elements being considered before making a search.

But we are a Government of laws, and we believe in the underpinning procedures of the court mechanism. That is the same with title III. We want to be sure that those things are very carefully examined before we go forward with a violation of what we perceive to be a very important constitutional right.

But I would be glad to look at it and to make my comments available to the Department of Justice. I am sure they will comment on the legislation.

TRAINING OF LAW ENFORCEMENT OFFICERS

Senator **Bumpers**. Judge, I think that is a fair answer. I don't have any big problem with the 1984 decision of *United States* v. *Leon*, but I think that may be as far as I want to go. It is true that the training of law enforcement officers is much superior to what it was when I was a youngster.

Judge **Sessions**. No question about it.

Senator **Bumpers**. That could be some grounds for supporting Senator Thurmond, but I think you are really wading off into a thicket with that, and it could be a little bit dangerous. I appreciate your answer, and I thank you, Mr. Chairman.

Senator **Hollings**. Senator Kasten.

CIVIL RIGHTS VIOLATIONS ON WISCONSIN INDIAN RESERVATIONS

Senator **Kasten**. Mr. Chairman, thank you. I don't have any questions, Mr. Chairman. I would like to associate myself with the views of Senator Rudman and Senator Gramm with regard to the importance of this budget. We very much have a responsibility, I believe, to work with you and to be sure that you are funded adequately.

I might just say that in addition to other issues that have been raised here over the past couple of years, particularly over the last 3 years in northern Wisconsin, we have had a number of violent, difficult protest situations regarding our Indians.

The Bureau has been involved in investigating claims of civil rights violations and also racist hate crimes directed against tribal members. It is a very difficult kind of work, and your people have, in my view, done a very fine and responsible job in terms of trying to work with the various groups that are affected along with the law enforcement people in northern Wisconsin.

I simply want to commend you and your people for the work that you have been doing.

Judge **Sessions**. Thank you, sir. If we fail to do a good job, I hope you will let us hear from you, because it is extremely important, particularly in the civil rights area, that we do a thorough, complete, and an absolutely essential job in those areas. We are the people who are charged with doing it, and it must be done well.

Senator **Kasten**. In my view, it is being done well, and it is tough work.

Judge **Sessions**. Yes; it is.

Senator **Kasten**. Particularly in those atmospheres in which there is a lot of tension. I think your officers, the people there, have been doing an admirable job, and I simply want to commend them through you for that.

Judge **Sessions**. Thank you, sir.

HIGH-INTENSITY DRUG TRAFFICKING PROGRAM IN SOUTH CAROLINA

Senator HOLLINGS. On these high-intensity areas, I know some language was included with respect to high-intensity areas. Senator Rudman and I had hearings down in South Carolina, and it became crystal clear that the drug violators, including the users, know how to move from the high-intensity area.

Down in my hometown of Charleston, SC, that would be a high-intensity area for the State, but the city police walk every beat around there. We have got an outstanding chief of police, Chief Rueben Greenburg. He has been nationally recognized as cleaning it up without any FBI and everything else just by getting the police out of their cars and walking the beats and making sure the dealers can't even move.

Columbia, SC, the State capital, would be a high-intensity area also. But, the drug dealers are also down in Orangeburg, about 35 miles from Columbia, where we put one of these surveillance vehicles there that looks like a U-Hauler taking pictures. In one case, it was like a drive-thru window, folks buying drugs without even getting out of their cars.

So we find out from practical experience and not this political exhaultation about high-intensity areas. That sounds fine to put our resources all there, but I hope we carefully review that decision to allocate support where the drug offenses are occurring rather than what we politicians think are high-intensity areas.

Judge SESSIONS. What you have done is underscore the necessity and the importance of the national drug strategy because it is designed to identify the entire organization, and that may take time.

They may move from one city to another but we are able to identify them, identify their assets, indict them, and wipe out the organization. Then, hopefully, seize the assets and forfeit them.

SUMMARY OF TESTIMONY

Senator HOLLINGS. Now we know from the chart and the survey that we have got 1,300 major bank fraud cases that we are not pursuing due to a lack of personnel. We know we also favor the DeConcini bill, which would take, and you have attested to that, additional money where you testify as to 240 some additional agents.

We know we need more personnel to gear up that 6-week delay of the actual fingerprint identification, and obviously, we don't expect you to come and submit a budget request and at the same time, criticize it. You in this court are sworn to tell the truth, and you have told the truth, but then the whole truth is we need more money than what you have asked for. I want to know how much.

Judge SESSIONS. I will try to provide some additional responses for the record.

Senator HOLLINGS. I would appreciate that very, very much.

[The information follows:]

FINANCIAL INSTITUTION FRAUD INVESTIGATIONS

On December 7, 1989, the Attorney General announced a 27-city attack on savings and loan fraud through the deployment of more than 400 additional Federal prosecutors, FBI investigators, and accounting personnel. The increase, funded under the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, provided the FBI with an additional 153 agents, 92 support positions and 100 accounting technicians. In addition, the FBI diverted 49 agents from other programs to this initiative, providing a total increase of 202 agents.

The FBI currently has 7,000 savings and loan fraud cases under investigation; however, 1,300 major cases involving over $100,000 each are inactive because of limited personnel resources. Based on a field survey conducted in 1989, the FBI estimated it would need an additional 425 agents to conduct financial institution fraud investigations. The FBI will add a total of 202 agents during 1990, which would leave a need for approximately 200 agents. However, in order to accurately judge the agent resources necessary to investigate the 1,300 unaddressed cases, further analysis would be necessary to assess the complexity and time requirements of the cases.

Judge SESSIONS. I appreciate the chair and this committee being so sensitive to the FBI's needs. There is no question about it: resources are a problem.

Senator RUDMAN. I have just been very fascinated during this hearing to watch the Judge, about halfway through the hearing, reach into his pocket, and take out some 3 by 5 cards. Those must be the 50 questions he is most asked about the FBI.

Judge SESSIONS. Pick a card. [Laughter.]

Senator BUMPERS. That is Dick Darman saying, "Don't answer Fritz Hollings' questions." [Laughter.]

Judge SESSIONS. I will tell you what they were. Those were cards on the savings and loan crisis from the hearing in Dallas. I wanted to be able to recall specific details.

Senator RUDMAN. You had it all right there.

Senator HOLLINGS. Judge, we have got to step up that action.

Senator BUMPERS. Mr. Chairman, I was speaking to the ex-FBI agents convention in Little Rock about 1 month ago from a nine-State region. The Judge would appreciate this. I told them I thought that the Director of the Bureau ought to always be a judge. They have a keen appreciation for the Constitution and the rights guaranteed to people by virtue of all of the cases they have tried and heard.

They also know that some people aren't fit to walk the streets.

Judge SESSIONS. Did they hiss and boo or did they cheer? [Laughter.]

Senator BUMPERS. I will give you three guesses what that crowd said. [Laughter.]

Senator HOLLINGS. I want to know how they got enough to constitute a convention. I can't get enough for a squad; I need more.

Judge SESSIONS. There are a lot of former FBI agents.

Senator BUMPERS. There is a network in my region of ex-FBI agents. They are extremely close.

Judge SESSIONS. Lee Colwell is there with you.

Senator BUMPERS. Yes; he was.

Judge SESSIONS. He is an active man down there.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Thank you very, very much, you and your associates here today.

Judge SESSIONS. Thank you very much.

Senator HOLLINGS. We will submit the balance of the questions to the Bureau for response in the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Drug Intelligence

QUESTION: The National Drug Control Strategy calls for the creation of a National Drug Intelligence Center (NDIC) to consolidate and coordinate intelligence gathered by law enforcement agencies and to disseminate the results to appropriate agencies.

To what extent will DEA and the FBI participate in NDIC? Will the NDIC's capabilities replace those of OCIS and NADDIS? What will be DIS' relationship to NDIC?

ANSWER: In June the Department of Justice issued a report entitled "A Preliminary Plan for the National Drug Intelligence Center." This report describes the mission and functions of the NDIC, its relationship to other intelligence centers and activities, and its organizational structure. As set forth in this plan, the principal focus of the NDIC will be to produce comprehensive all-source strategic analyses of priority drug trafficking organizations. The NDIC will be an interagency center with full participation by the key agencies involved in drug intelligence, including the FBI and the DEA.

The FBI supports the establishment of the NDIC and views the NDIC as supporting and enhancing its efforts against major illegal drug trafficking enterprises.

The NDIC will not replace or consolidate existing agency intelligence information systems, such as DEA's Narcotics and Dangerous Drug Information System (NADDIS) or the FBI's Organized Crime Information Systems (OCIS), Investigative Support Information System, and Drug Information System (DIS). These systems have been developed to support specific mission needs. Rather, the NDIC will build its own database on major drug organizations drawing from these sources. Similarly, the NDIC will identify its own requirements for sophisticated automated support, and, to the extent possible, build on the developmental work that has been done by other agencies, including the FBI and the DEA.

FBI National Drug Strategy

QUESTION: The 1991 budget request for the FBI's drug program includes 94 additional special agent positions.

How will these additional agents enable the FBI to enhance its anti-drug program?

ANSWER: These 94 additional agent positions will assist the FBI in the continued implementation of its National Drug Strategy (NDS). Components of the FBI's NDS include the following: enhancing the drug trafficking intelligence base; concentrating resources on the highest levels of drug trafficking in cities identified as Level I and Level II drug distribution centers; and seizing and forfeiting the proceeds from drug trafficking. Critical to the successful implementation of the NDS is the incremental enhancement of agent and support resources necessary to target the major multi-jurisdictional drug trafficking organizations.

The FBI's NDS has led to a more effective focusing of resources on the highest level of drug trafficking organizations, both nationally and regionally. These sustained, long-term investigations are resource intensive, but the results are commensurate -- neutralization of the highest level of drug trafficking organizations and the seizure and forfeiture of their assets.

Currently, the FBI is able to address approximately 40 percent of the over 550 major multi-jurisdictional drug trafficking organizations identified to date. These organizations include Colombian/South American, Mexican, European/Italian and Asian drug trafficking groups. With the requested additional resources for the FBI's Drugs and Organized Crime Drug Enforcement Task Force (OCDETF) investigative efforts, it is anticipated that the FBI would be able to address approximately 50 percent of these major identified groups involved in the manufacture, importation, and distribution of illicit drugs. Targeting these organizations is in furtherance of the FBI's NDS and OCDETF objectives of reducing the incidence of illegal drug trafficking by addressing the most virulent international or multi-jurisdictional drug trafficking organizations and other crimes related to their conspiracies.

QUESTION: The 1991 budget request for the FBI's Drug program includes additional support positions, e.g., language specialists, laboratory technicians, and electronic support.

Please explain why these additional positions are integral to the FBI's anti-drug program.

ANSWER: The requested additional special support positions are an integral part of the FBI's investigative efforts in battling major multi-jurisdictional drug trafficking organizations. These special support personnel are required to perform ancillary investigative functions and to insure agent investigative activities are fully and properly supported. Support personnel are needed to perform lower-level investigative functions, thereby relieving highly-trained investigators of those tasks. This provides additional time for agents to make full use of their specialized skills by performing the more technical and complex investigative matters inherent to drug matters.

Special support positions are needed to monitor and translate English and non-English language conversations, writings and electronic intercepts. Electronic surveillance monitors perform the monitoring and transcribing tasks attendant to English Title III electronic surveillance coverage. However, 80 percent of FBI drug cases have a nexus with a foreign source country. As a result, Title III installations targeting upper-level suspects within major drug trafficking organizations require considerable support from language specialists. The FBI's drug investigative responsibilities require a full complement of full-time language specialists to effectively and efficiently address the foreign languages most frequently encountered in drug conspiracies. These languages include Spanish, Italian, Sicilian, Japanese, Korean, Vietnamese, and Chinese (both the Cantonese and Mandarin dialects). Utilizing language specialists to perform translation functions is cost effective and allows for a better trained and experienced workforce, which is desirable due to the statutory minimization requirements of Title IIIs.

Additionally, special support personnel are required to conduct intelligence analyses in the field. With the ongoing implementation of the FBI's DIS, sufficient staffing must be available in the field to analyze, consolidate, and automate the enormous amount of intelligence data on drug trafficking. Laboratory technicians, such as Racketeering Records Analysis Specialists, work hand-in-hand with DIS analysts, graphically producing case analyses which track the process of drug investigations along a time line, a process that is of great benefit to investigators and prosecutors alike. Without the requested positions, the FBI would not be able to utilize the comprehensive and much-needed DIS in the most effective and efficient manner possible.

QUESTION: The 1991 budget request for the FBI's Drug program includes $6.3 million for non-personnel funding in the Technical Field Support and Equipment program in order to augment physical and electronic surveillance capabilities to support drug investigations. Specifically, how would these funds be used? Please explain why these resources are integral to the FBI's anti-drug program?

ANSWER: The FBI's 1991 request includes funding of $3.289 million for physical surveillance and $3.12 million for electronic surveillance equipment for a total of approximately $6.409 million to support drug investigations.

Closed-circuit television (CCTV) acts as a valuable investigative and prosecutive tool for maintaining discreet surveillance of subjects, buildings, and other locations. Video recordings of drug deals and meetings between traffickers and associates are used by agents to help direct investigations and aid in the prosecution of subjects by providing juries with visual evidence of illegal acts. Of the requested funding, $1.8 million will provide the FBI with various CCTV equipment to conduct vehicle and stationary surveillance and protect FBI off-site and office space.

Tracking devices, both vehicle systems and satellite tracking beacons, are also extensively utilized in surveillance of drug traffickers. Funding of $1.0 million will be used to acquire additional radio surveillance tracking systems and devices to replace existing equipment that has exceeded its planned life-cycle and to expand inventories so that sufficient equipment is available to meet projected requirements.

Conducting court-approved electronic surveillance often requires a surreptitious entry to deploy and/or retrieve electronic and physical surveillance devices. Funding of $400,000 will allow the acquisition of equipment necessary for the FBI to maintain its ability to comply with the growing number of court-approved entries associated with drug investigations.

The increasing use of court-approved electronic surveillance in drug cases generates an increasing demand for additional technical equipment used to collect and process intercepted conversations. Without question, the evidentiary value of recorded conversations is one of the strongest tools available to agents and prosecutors. This evidence directly places subjects as participants in drug deals and related criminal activities. To augment the electronic surveillance capabilities of the FBI,$3.12 million is needed. Of this, funding totaling $1.2 million will allow the acquisition of eight digital audio transcriber workstations which provide for the efficient and timely transcription and reporting of intercepted audio conversations made from on-body recorder transmitters and from court-approved microphone surveillance. These workstations are capable of reducing by 30 to 40 percent the time required to prepare transcripts of recorded conversations.

Recording and analyzing telephone number information collected by pen registers is valuable in identifying associates, contacts, and customers of drug traffickers. The FBI has developed a capability to directly download telephone call-record information into its Field Office Information System. This automatic downloading capability eliminates the need to manually enter telephone call records and is more accurate and timely. Drug traffickers are embracing and exploiting the latest high-technology communications capabilities to control and support drug networks and activities. Funding totaling $720,000 is needed to acquire additional dialed-number recorders and software, and telephone and data intercept equipment.

The successful conduct of court-approved microphone surveillance requires sufficient quantities of open reel, cassette, and digital recorders. The FBI's inventory of recording equipment is inadequate to support the repetitive requirements associated with an increasing amount of drug-related electronic surveillance. The failure of recording equipment during a critical microphone surveillance could result in the loss of key evidence against drug traffickers and others. Funding of $1.2 million is needed to acquire recording equipment for deployment to field offices.

Physical and electronic surveillance play an integral role in the conduct of drug investigations. Drug investigations require extensive physical surveillance to establish identities of associates and locations used to conduct drug trafficking, gather evidence, and provide security for undercover agents, cooperating witnesses, and informants. The success of surveillance activities is directly related to the availability of adequate types of technical equipment and techniques used to track and observe subjects engaged in criminal activities. Surveillance activities are the mainstay of FBI investigations and, when supported by the requested advanced technologies, can provide the backbone of the FBI's prosecutorial evidence and play a primary role in bringing drug traffickers to justice.

QUESTION: The budget documents state that in March 1989, FBI management decided to no longer divert resources from other investigative priorities into its drug investigations. Yet drugs are widely acknowledged to be a leading law enforcement problem.

Are drug investigations the FBI's top priority? Do they remain so given the March decision? If they are not, please explain why. Finally, did the FBI inform other agencies with drug law enforcement responsibilities of its decision so that compensating actions, where possible, might be taken?

ANSWER: The FBI is a multi-mission agency and, on a national level, has designated six investigative programs as tantamount investigative priorities. The six priority programs include Drugs, Counterterrorism, Foreign Counterintelligence, Organized Crime, Violent Crimes and Major Offenders, and White-Collar Crime. The designation of one investigative program as having precedence over all other programs would preclude the organization from meeting its investigative mandates, particularly in areas where it has primary or sole jurisdiction, as is the case with Foreign Counterintelligence and in many White-Collar Crime and traditional Organized Crime violations.

Currently, the FBI is mandated to investigate more than 200 violations of Federal law. Approximately eight percent of its total field agent resources (excluding OCDETF) are utilized on drug investigations. Resource enhancements are required to meet the FBI's needs to accelerate its National Drug Strategy, as internal reprogrammings often hamper the FBI's ability to meet its other investigative responsibilities.

All OCDETF participants were advised of the FBI's resource limitations through the Washington Agency Representatives Group, the Executive Review Board, and through regional conferences.

QUESTION: The term "narcoterrorism" has entered the nation's vocabulary. Colombian drug cartels reportedly threatened to bring their style of terrorism into the U.S. if its members were extradited to the U.S., which has in fact happened.

What evidence does the FBI have concerning how seriously we are threatened with terrorism sponsored by drug dealers? Does the FBI need additional resources or authorities to assure that our nation is not subjected to the terrorist activities that are common in Central and South America?

ANSWER: The FBI recognizes that the United States could be threatened domestically with terrorism sponsored by international drug groups. Certain matters of interest to the FBI have surfaced over the past year, which appear to involve efforts by narcotics organizations to utilize terrorist tactics in the United States. However, no organized narcotics trafficking/terrorism nexus has been identified in the United States. Accordingly, no additional resources or authorities are required to counter this potential threat at the present time.

Colombian drug traffickers have adopted terrorist approaches to confront enforcement efforts and extradition to the United States. They have killed hundreds of judges, police officers, and politicians with terrorist-like impunity in Colombia. Their successes there could spawn the belief that they can successfully carry that approach to the United States to intimidate police and politicians here. Drug traffickers have adopted many of the terrorist methods of the traditional terrorist organizations in Colombia, notably the M-19 whose base was originally political and non-drug related. Intelligence exists that there are present connections between the M-19 and drug cartels.

A-76

QUESTION: In the 1990 budget, the President proposed reductions for A-76 management initiatives. The Committee did not agree with this proposal and directed that the positions remain available to affected agencies.

What was the outcome of this? Did the FBI retain the 247 positions as the Committee had directed?

ANSWER: The FBI did not retain the 247 positions as the Committee had directed. These positions included 129 in the Records Management Program and 118 in the Fingerprint Identification Program. These decreases are summarized on page 97 of the 1990 budget justification.

QUESTION: The 1991 budget proposes a further reduction of 146 positions for A-76 savings. How many positions has the FBI lost for A-76 management initiatives? What is the impact of this on the FBI?

ANSWER: The FBI has been reduced by a total of 678 positions since 1987 as a result of the A-76 initiative. For 1991, an additional 146 position reduction is planned. In compliance with the initiative, the FBI is currently conducting six separate cost comparison studies of nearly 800 positions. These studies are scheduled for competition this year. These 1991 reductions have primarily been taken from the FBI's Records Management Division (RMD) and Fingerprint Identification Division.

The FBI is a vital link in the criminal justice community. The importance of the FBI's Identification Division to the criminal justice system in this country cannot be overstated. Every time a prosecutor decides whether or not to charge a defendant, whether to accept a plea or to seek an indictment, whether to recommend bail or to recommend pre-trial custody, the individual's arrest record inevitably comes into play. When judges consider sentencing a person duly convicted of a crime, the defendant's arrest record is often a decisive factor in determining whether a person is confined or not. The same information is considered when deciding whether to parole a prisoner and in properly supervising probationers.

The RMD is primarily responsible for maintaining the FBI files and other criminal and foreign counterintelligence information.

QUESTION: The Committee has serious doubts about the privatization of law enforcement functions. Do you agree that these are truly "commercial" activities?

ANSWER: The Department of Justice has stated the intention not to contract out functions that are inherently Governmental in nature or integrally related to law enforcement functions where law enforcement efforts could be compromised or law enforcement personnel endangered. At the same time, there are many functions within the Department and the FBI which are considered to be commercial and therefore subject to privatization. The FBI has developed an inventory of more than 1,500 of these commercial activities that may not be inherently Governmental which might be performed in the private sector.

QUESTION: How is progress going on your cost comparison efforts? Have you identified any personnel savings yet?

ANSWER: The FBI has been aggressive in its A-76 program implementation. Recent progress includes: hiring a professional with six years A-76 experience to manage FBI efforts; six separate ongoing studies which involve nearly 800 employees; and four functions scheduled for competition with the private sector this year. Cost savings will be identified when the results of competition are known.

Engineering Research Facility

QUESTION: In the 1990 appropriations bill, $15 million was designated to continue construction of the Engineering Research Facility. What is the status of the construction? Why is funding for this construction being nonrecurred in 1991. Will the entire facility be completed? What are your plans for Pod C?

ANSWER: The FBI has allocated $15 million from its 1990 appropriation for construction of Pods B and D of the Engineering Research Facility (ERF). The first of the four components of the ERF, Pod A, was completed and occupied in October 1989. Negotiations with the general contractor to return to the facility site have been completed and we anticipate a resumption of construction in mid-June 1990, with an anticipated completion date of both Pods B and D in December 1991. This funding will not cover costs for completion of Pod C because the funding identified internally by the FBI for ERF construction is being nonrecurred in 1991 at the direction of the Office of Management and Budget.

Washington Metropolitan Field Office

QUESTION: The FBI has asked that $10 million previously authorized for relocating its Washington Metropolitan Field Office be made available for activities funded by its general appropriation.

What is the status of the relocation of the Washington Metropolitan Field Office? Is a move planned? If so, when? Has a site been located? If the FBI still plans to relocate the field office, will it be coming back to the Congress to request funds for the move, and if so, when and how much?

ANSWER: The issue of the relocation of the Washington Metropolitan Field Office has been pending since 1982. Over the last several years, various proposals have been formulated for the relocation project. As recently as September 1989, the recommendations of a joint General Services Administration (GSA)/Office of Management and Budget (OMB) Task Force identified the Washington Metropolitan Field Office relocation as one of 21 critical Federal housing projects. GSA has also been in the process of preparing a new prospectus for the relocation project for submission to the House Public Works Committee.

The Administration has submitted an amendment to the 1991 budget for GSA that includes funding to implement the recommendations of the joint GSA/OMB Task Force. An amount totaling $98,372,000 is included in this amendment for a new Washington Metropolitan Field Office. There are still some outstanding issues with OMB relating to the relocation issue. The FBI is currently in the process of resolving these issues.

The Office of Management and Budget instructed that a base level reduction in general operational funds of $10 million be taken in 1991, which is to be offset by the use of the no-year relocation funds toward the FBI's annual operating requirements.

Fingerprint Identification

QUESTION: What is the status of the automation of the FBI's Fingerprint Identification operations?

ANSWER: The Identification Division currently has a family of computer-based systems that automates and manages the fingerprint identification operations of the FBI. This family of computer systems provides subject searching, automated ten-print technical searching, criminal history file maintenance, Interstate Identification Index (III) processing, certain wanted person postings, and automated response generation functions. It manages the largest ten-print fingerprint record data base in the world.

In spite of its size and complexity, however, it lacks some major features commonly found in commercially available Automated Fingerprint Identification Systems (AFISs), such as latent fingerprint processing capabilities and a fingerprint Image Storage and Retrieval (ISR) subsystem. Furthermore, the current systems have been developed over a number of years. Some of the existing subsystems and components date back to the 1970's and are rapidly reaching the end of their useful lives.

Therefore, the FBI has plans to make major upgrades to its automated systems. If approved by the Administration, these major upgrades would be made in conjunction with the planned relocation of the division and will include the acquisition of a fully integrated AFIS which will include ten-print and latent searching capabilities and a fingerprint ISR subsystem. In addition, the upgraded systems will be sized to handle continued growth in the fingerprint identification workload.

A Statement of Work outlining the analytical and technical services required to develop concepts and plans for this major systems upgrade has been developed and incorporated into the requirements for the Identification Division Revitalization and Relocation Project. It is expected that a contract to provide those services will be awarded in the near future.

In parallel with the development of specifications for an AFIS, the FBI plans to propose development of a system to support the paperless submission and processing of fingerprint identification data. This system will permit the transmission of fingerprint image, identification, and arrest data directly to the FBI from State AFISs by electronic means and will produce the framework for a completely paperless environment for fingerprint processing for all services in the future.

QUESTION: What is the plan for, and the status, of the relocation of the Identification Division?

ANSWER: The FBI has tentatively selected a vendor to conduct a relocation study to include support for the automation, demographics, facilities design, and human resources considerations contingent upon acceptable cost figures and time-line constraints. The Identification Division, with the assistance of other FBI Divisions, is making every effort to proceed with a relocation plan which will benefit the FBI and the Nation's criminal justice community.

The Identification Division's relocation plans include the design and implementation of state-of-the-art technology driven by an advanced Integrated Automated Fingerprint Identification System (IAFIS) compatible with local law enforcement requirements. A relocation study is being commissioned to assist in the design of a totally new fingerprint identification operation with a 21st Century automated system being formulated together with our main law enforcement contributors. It is anticipated that this essential project will be located in an appropriate location outside the Washington, D.C., area.

QUESTION: What is the status of the Federal User Fee Program? What impact has this program had on the FBI?

ANSWER: Federal agencies were notified that billing would begin on or about April 15, 1990. Both Federal and non-Federal User Fee bills were generated on April 21, 1990. Gross revenue generated for the Federal User Fee Program for the period of January 1, 1990, through March 31, 1990, was approximately $4.6 million. Beginning with the month of April 1990, Federal agencies are receiving a User Fee bill on a monthly basis. All Federal users of the Identification Division services were previously provided 90-days notice by contributor letter of this User Fee Program.

The imposition of the Federal User Fee Program has affected the number of fingerprint cards received from the Federal agencies since implementation of the Program. The number of fingerprint cards received through the Federal User Fee Program since January 1, 1990, is approximately half the original estimate. Since the $30 million reduction to implement the program in 1990 was based on projected receipts for the full year, the FBI may encounter problems because of the loss of revenue which could have been earned during the first quarter of 1990, as well as the reduction in anticipated receipts due to the transition problems in Federal agencies.

DNA Fingerprinting

QUESTION: The 1990 Commerce, Justice, State, and the Judiciary Appropriations Act included funding to establish a national DNA database system to be available to State and local law enforcement authorities, and to train state and local examiners in DNA analysis.

Please describe the progress the FBI has made in these areas.

ANSWER: The FBI is working to create a nationwide system for exchanging uniform deoxyribonucleic acid (DNA) data among Federal, State and local crime laboratories to assist the investigation of violent or sex-related crimes. The DNA National Index will include DNA profiles from open cases and convicted violent/sex offenders and will serve as a clearinghouse, or pointer system, to alert a crime laboratory of DNA analysis results in another jurisdiction which indicate a connection with the samples tested.

The National Index will be at the head of a national DNA database system connecting participating State and local DNA crime laboratories. The FBI's efforts to develop such a national system are set forth below.

The FBI is working with State and local crime laboratories to reach consensus on a uniform DNA protocol that provides compatible results which can be used in a national database system. Crime laboratories are to be accredited under a voluntary testing program through a third-party proficiency testing laboratory.

The FBI will establish and maintain a nationwide network to support the exchange of DNA profiles between crime laboratories and develop a model computer system to automate operational procedures and record-keeping requirements for DNA analysis which are common to all DNA crime laboratories. Computer support is to be provided through a long-term contract with a commercial vendor for computer services.

The FBI will work to ensure that there is sufficient flexibility in the DNA protocol and computer support to accommodate scientific or technical developments leading to new methods for DNA analysis. The technology underlying DNA analysis is dynamic and new developments in typing methods are on the horizon, which can provide faster and less costly results.

The FBI Laboratory has embarked on an aggressive program to fully satisfy the numbers of training requests coming from State and local crime laboratories. Two DNA classes were held in 1989. Four classes will be held in 1990. Each class is limited to 30 students for a total of 180 State and local crime laboratory examiners and technicians that have completed this training to date.

All DNA classes are held at the FBI Academy in Quantico, Virginia. The DNA course is four weeks long and is conducted in a combined lecture/laboratory format by the forensic research scientists who developed the FBI's protocol. The classes are provided to State and local crime laboratories as a service of the FBI; room, board, and transportation to and from the Academy are paid by the FBI. There is no direct cost to participating crime laboratories other than the salaries of students while attending the class.

In addition, the FBI sponsors a program for visiting scientists who work at the FBI Academy in the Forensic Sciences Research and Training Center in a four-month practicum performing research that is essential to refining existing methods and development of new methods for DNA analysis. Since July 1988, the FBI has hosted a total of 19 DNA visiting scientists.

FBI--Drug Investigations

QUESTION: Let me first tell you of the outstanding job the FBI is doing in my State of South Carolina since you sent Fred Verinder down to head up the operation. We are really starting to turn things around down there in regard to drug enforcement -- and it's all been led by your man, Fred Verinder.

Eighteen months ago, the FBI didn't have a drug case in Myrtle Beach, Charleston, or Beaufort County, South Carolina. Now the FBI is being forced to pick and choose between cases because there just aren't enough resources to investigative all the drug cases they are uncovering.

The FBI's 1991 request includes an additional 94 agents in drugs and an additional 177 agents for the organized crime drug enforcement task forces.

What do you hope to accomplish with these resources?

ANSWER: The requested additional agent resources will assist the FBI in the continued implementation of its National Drug Strategy (NDS). Components of the FBI's NDS include the following: enhancing the drug trafficking intelligence base; concentrating resources on the highest levels of drug trafficking in cities identified as Level I and Level II drug distribution centers; and seizing and forfeiting the proceeds from drug trafficking. Critical to the successful implementation of the NDS, is the incremental enhancement of agent and support resources necessary to target the major multi-jurisdictional drug trafficking organizations.

With the requested additional resources for the FBI's Drug and Organized Crime Drug Enforcement Task Force (OCDETF) investigative efforts, it is anticipated that the FBI would be able to address approximately 50 percent of the over 550 major multi-jurisdictional organizations identified to date. Currently, the FBI is able to address approximately 40 percent of these groups involved in the manufacture, importation and distribution of illicit drugs. These organizations include Colombian/South American, Mexican, European/Italian and Asian drug trafficking groups. Targeting these organizations is in furtherance of the FBI's NDS and OCDETF objectives of reducing the incidence of illegal drug trafficking by addressing the most virulent international or multi-jurisdictional drug trafficking organizations and other crimes related to their conspiracies.

QUESTION: Does this increase really reflect an increase in the number of agents?

ANSWER: Yes. The total net increase from the 1990 appropriated levels to the 1991 request to Congress includes a net increase of 72 Drugs Program agents and 154 OCDETF agents.

QUESTION: Can we expect any additional FBI personnel in South Carolina?

ANSWER: The FBI field office in Columbia, South Carolina, will likely receive additional drug resources in succeeding years. One thrust of the FBI's National Drug Strategy is intended to target major, multi-jurisdictional drug organizations with direct connections to primary distribution centers. The FBI's intelligence base has demonstrated that such groups do exist in various areas of South Carolina.

FBI Agent Staffing

QUESTION: Judge Sessions, I see in your 1991 budget you are requesting an increases in the number of positions, but a decreases in the number of workyears. In terms of agents, I understand that you are asking for a net increase of 249 agent positions, yet a net decrease of 116 agent workyears. Now, I find this confusing.

Are you going to have more agents or less agents?

ANSWER: It is true that the FBI will have more agent positions but fewer agent workyears in 1991. The new positions in 1991 would be annualized in 1992, thereby adding additional workyears in 1992.

QUESTION: Please explain how we can increase actual agent strength while decreasing the number of workyears.

ANSWER: The 1991 budget proposes program increases totalling 501 new special agent positions and 136 workyears. At the same time, the budget proposes program decreases of 252 special agent positions and workyears. These workyear decreases more than offset the increases, leaving a net decrease in agent workyears. Therefore, although a net of 249 more special agent positions are requested, the proposed funding would pay for 116 fewer agent workyears. However, with the annualization of these positions in 1992, the FBI will receive an additional 365 agent workyears.

This situation is primarily the result of the higher lapse rate of positions due to increased administratively uncontrollable overtime (AUO) costs. Ordinarily, when new positions are proposed, funding is requested at a rate of 50 percent, i.e., one workyear for every two positions. However, this budget differs. In order to fund the increased cost of AUO, the lapse rate was increased from 50 to 75 percent for most programs except Drugs, in which positions are lapsed at 65 percent.

Recommendation of the National Advisory Commission on Law Enforcement

QUESTION: Senator DeConcini has introduced legislation to implement the recommendations of the National Advisory Commission on Law Enforcement which would, among other things, provide Federal law enforcement personnel with locality pay, increase the entry level pay for agents, and provide time and a half for administratively uncontrollable overtime (AUO).

Congress passed an increase in AUO at the end of the last session. We have seen the impact this is having on the various law enforcement agencies as a result of OMB's decision not to provide the monies for its implementation. In particular, the FBI is having to absorb $42 million in 1991.

What impact would the DeConcini bill have on the FBI if enacted into law?

ANSWER: The provisions of the DeConcini bill would implement the major recommendations contained in the final report of the National Advisory Commission on Law Enforcement, with certain modifications, based on its study of pay and benefits for Federal law enforcement officers. The enactment of this legislation would provide agencies with flexibilities to reduce the recruitment and retention problems that now exist for the affected law enforcement occupations.

The Administration has submitted legislation, the Federal Pay Reform Act of 1990, which deals with the recruitment, pay and retention problems of all Federal employees and not just law enforcement officers. The cost of the Deconcini bill, which effects only law enforcement personnel, is estimated at $411 million in 1991, of which $45 million would be the FBI's cost. The estimated cost of the Administration's proposal, which would apply to all Federal employees, is $328 million in 1991.

QUESTION: How much would it cost the FBI to implement the DeConcini bill?

ANSWER: The cost to implement the Federal Law Enforcement Pay Reform Act of 1990 (S. 2250) for the FBI is estimated at $45.4 million for 1991. However, this estimate excludes almost $11 million for the New York Demonstration project that the FBI is currently paying. New costs under S. 2250 of $3.4 million for associated benefits are also excluded. In addition, the FBI's portion of these costs, in conjunction with the reimbursable Organized Crime Drug Enforcement Task Force (OCDETF), is estimated at $1.8 million for 1991.

Hate Crimes Statistics Act

QUESTION: Last week, President Bush signed into law the Hate Crimes Statistics Act which directs the Department of Justice to collect and publish data on crimes clearly motivated by prejudice against a victim's race, religion, sexual orientation or ethnicity.

I understand the FBI's Uniform Crime Reporting (UCR) is likely to be assigned the task of collecting the data on hate crimes. Does the FBI share Congress' commitment to the collection of hate crimes statistics so we as a nation can better fight prejudice and bigotry?

ANSWER: The FBI believes that the statistical collection of crimes that are motivated by hate/bias and relevant detail data regarding the nature of the offense, the offender, and the victim would well serve several National interests. These crimes are often not only heinous in themselves, but their scope reaches much further than the individual victims at whom they are directed. In fact, every member of the victim class within the community is psychologically victimized.

In addition to allowing lawmakers and Government executives at every level to address the hate issues, reliable data would be useful to law enforcement in responding to the specific and unique nature of crimes motivated by hate/bias. Law enforcement officers would become more sensitized to the issue, and community service groups could apply resources more effectively and efficiently.

QUESTION: Do you believe the data collection process will provide a useful tool for the Department of Justice to investigate and prosecute perpetrators of these heinous crimes?

ANSWER: While the collection of this data will not identify specific cases within the investigative domain of the Department of Justice, it will certainly provide investigative and prosecutive direction and predicate approaches. This will enhance both strategic and logistical efforts.

QUESTION: According to a recent article in the Washington Times on the day the President signed the Hate Crimes

Statistics Act into law, the FBI is considering a proposal to discontinue the Uniform Crime Reporting (UCR) program because of financial constraints. The Hate Crimes Statistics Act was drafted with the Department of Justice with the specific intent that the statistics collection would be implemented through the UCR.

Does the FBI, in fact, intend to discontinue the UCR?

ANSWER: The FBI has recently undertaken many new responsibilities. In order to provide for the additional responsibilities, the FBI has had to consider its only two options, which are to reduce existing programs or decrease responsibilities. If cuts have to be made somewhere, the UCR Section is a natural candidate to consider -- in particular because the functions it performs overlap to some extent with those currently performed by the Bureau of Justice Statistics in the Department of Justice. However, contrary to the implication of the Washington Times article, the Director of the FBI has not made a formal proposal to discontinue the UCR program.

Moreover, even if the Department of Justice does decide at some point to discontinue the FBI's UCR program and to transfer its functions elsewhere, such a decision would be entirely consistent with the Department's obligations under the Hate Crime Statistics Act. While individual Members of Congress may have hoped or expected that the Attorney General would assign his duties under the Act to the FBI's UCR Section, the text of the Statute leaves the choice of how and through whom to execute these duties entirely to the discretion and judgment of the Attorney General.

QUESTION: Has Congress been misled about the availability of the UCR for the collection of hate crimes statistics?

ANSWER: Absolutely not. The FBI has funded the UCR program for sixty years and has not made any proposal to the Department of Justice or the Administration to discontinue the program. However, when the Attorney General testified the Committee on May 16, the only assurance he made was that the Department will fulfill its responsibilities with regard to hate crime statistics. He is concerned about the fact, already noted above, that the Department currently maintains two separate statistical gathering units with respect to crime -- the Bureau of Justice Statistics and the FBI's UCR Section. He specifically disavowed any commitment to continue the UCR unit as is indefinitely. What counts is that the job be done, not where it is done. As the Attorney General emphasized, "we will fulfill out commitment there, because I think it is an important thing, and whatever has to happen will happen to see that it is done."

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

New Jersey-New York Office Staffing/Effects of the New York Office Pay Demonstration

QUESTION: The 1989 Intelligence Authorization Act instituted a 5-year pay demonstration project for New York City FBI agents. Agents in the New York Office have received a 25 percent pay increase and a $20,000, one time relocation allowance for newly transferred agents.

How does the Bureau define a senior agent? How does the Bureau define support staff? Please provide a summary of salaries of senior agents in the New York, Newark and Camden offices. Please also provide salary statistics for new agents and support staff.

ANSWER: An official definition for a "senior agent" has not been developed by the FBI. Clearly, an agent with extensive experience in specific investigative areas can be considered a senior agent. Ordinarily, those agents at the GS-13 level would be considered senior special agents (SAs). However, since the FBI has gone to accelerated promotions in New York and Newark, grade level is not definitive. FBI employees are compensated under the General Schedule pay system, which provides, in part, for within-grade increases based on longevity within a grade level. The normal progression for FBI agents is seven years from GS-10 to GS-13; however, in the New York and Newark offices SA progression from GS-10 to GS-13 is accelerated to three years.

Support staff is traditionally defined as any FBI employee in a position other than special agent. In addition to general clerical positions, there are numerous special, professional, administrative, and technical positions which are considered support staff. These special and technical positions include language specialists, electronics technicians, automotive maintenance staff, accounting technicians, various analytical personnel and others.

The following chart delineates the average salaries of existing agents in nonsupervisory positions (GS-10 to GS-13) and existing support staff:

Average Salary Comparison

Office	Pos/Grade	Average Salary	Average Salary w/AUO	Average Salary with AUO & 25% Retention Pay
New York	Agent-GS-10	$27,357.16	$34,158.16	$40,997.45
	Agent-GS-11	31,524.44	38,325.44	46,206.55
	Agent-GS-12	36,150.63	42,951.63	51,989.29
	Agent-GS-13	46,840.89	53,641.89	65,352.11
	Support (R)	24,382.10	N/A	30,477.63
	Support (SR)	19,901.24	N/A	24,876.55
Newark	Agent-GS-10	28,043.23	34,844.23	N/A
	Agent-GS-11	31,434.80	38,235.80	N/A
	Agent-GS-12	35,931.60	42,732.60	N/A
	Agent-GS-13	48,403.71	55,204.71	N/A
	Support (R)	20,801.27	N/A	N/A
	Support (SR)	20,421.83	N/A	N/A
Camden	Agent-GS-13	48,109.33	55,910.33	N/A
	Support (R)	18,933.50	N/A	N/A

Key: AUO = Administratively Uncontrollable Overtime
R = Regular
SR = Special Rate
N/A = Not Applicable

QUESTION: What effect has the New York Office pay demonstration project had on recruitment and retention in the New York office? What are the staffing levels in the New York office now? What were they before implementation of the demonstration project? What are they projected to be at the project's completion? Before the project's implementation, what were they projected to be in 1993? How many requests for transfers to other offices has the New York office received since inception of the demonstration project? How many have been granted? How does this compare with the rate of attrition in the two years before the demonstration project? Where are these agents going? Why?

ANSWER: The New York Demonstration Project (NYDP) has reversed the rising rate of resignations of special agents assigned to the New York office as indicated in the table below. For several years prior to the demonstration project, the New York office operated at a level of about 100 SAs below its target staffing level (TSL). Without the demonstration project, this shortage could have increased to 150 to 200 agents by 1993. Since the implementation of the project, the ability to staff the New York office has increased. It has been operating at a level of between 10 to 20 agents below its TSL. Currently the New York Office's on-board level is 1,152 positions, 12 positions beneath its TSL of 1,164. Moreover, the FBI now has a list of agents desiring to be transferred to the area, where previously no such list existed. As noted below, there were 88 SAs transferred into the New York office and only 61 transferred out in 1989.

Special Agent Resignations

	New York			Newark		
FY	Number	% TSL	% On-Board	Number	% TSL	% On-Board
1985	13	1	1	1	0	0
1986	24	2	2	0	0	0
1987	37	3	3	4	1	2
1988	41	4	4	5	2	2
1989	21	2	2	9	3	4
1990 (to date)	7	1	1	5	2	1

Special Agent Staffing Levels

	New York		Newark	
FY	TSL	On-Board	TSL	On-Board
1985	1,131	1,052	240	234
1986	1,167	1,097	262	240
1987	1,225	1,084	269	252
1988	1,164	1,080	281	265
1989	1,164	1,146	281	254
1990 (to date)	1,164	1,152	281	271

Special Agent Transfers
Into And Out Of The New York Office (NYO)

	Into the NYO			Out of the NYO		
Transfer Type	1987	1988	1989	1987	1988	1989
Career Develop. Program	5	5	4	52	26	17
New Agent	32	53	23	N/A	N/A	N/A
1st Office Agent Rotation	100	153	33	N/A	N/A	N/A
Operational	0	0	4	13	8	10
Office of Preference	2	0	24	55	26	28
Other	0	2	0	15	0	6
TOTAL	139	213	88	135	60	61

With regard to the support staff of the New York office, in 1987, 84 employees resigned; in 1988, 114 resigned; and in 1989, 120 employees resigned. To date, only 24 employees have resigned in 1990. These figures include summer employees with tenures of not to exceed 120 days. The majority of support employees were not covered by the demonstration project until the beginning of 1990.

However, the FBI believes that the increased support salaries have enhanced the New York office's recruiting efforts. A recent recruiting day in Staten Island for clerk-typists to staff the Staten Island Word Processing Center attracted more than 200 applicants for 18 positions.

QUESTION: What effect has the New York Office pay demonstration had on recruitment and retention in the Newark, New Jersey office? What effect has it had on other New Jersey offices? What are the current staffing levels in the Newark office? In the Camden office? What were they before implementation of the demonstration project? What are they projected to be at the project's completion? What were they originally projected to be in 1993? How many requests for transfers has the Newark office received since inception of the demonstration project? How many have the other New Jersey offices received? How many have been granted? How does this compare with the rate of attrition in the two years before the demonstration project? Where are these agents going? Why? Particularly, how many from each office are transferring or requesting transfers to the New York office? How many per office have been granted?

ANSWER: The first annual NYDP Report is being finalized by the FBI and the Office of Personnel Management. It will be delivered to President Bush and Congress in the near future. The report specifically addresses the impact of the NYDP on Newark.

The FBI's Camden Resident Agency (RA) is part of the Philadelphia Division, and other RAs in New Jersey are part of the Newark Division. Since the FBI's automated information is maintained on a divisional basis rather than by RA, it will not be possible to provide the requested information on the Camden RA in all instances.

The NYDP has had a noticeable effect on the FBI's Newark office. Although the Newark office and the New York office have different management teams, crime problems, commutes, personal tax policies, and working environments, they are separated by a distance of only seven miles and are, therefore, subject to comparable cost-of-living influences. A comparison of Newark's TSL figure (281 SAs) to the actual on-board complement (254 SAs) at the end of 1989 indicates a shortfall of 27 SAs, or nine percent of its authorized TSL. As indicated by the chart furnished above, the SA resignation rate for the Newark office increased from five to nine SAs between 1988 and 1989.

This is contrasted to the SAs resignation rate for the New York office, which dropped by 49 percent, from 41 SAs to 21 SAs, for the same period. The resignation rate of Newark SAs is expected to remain steady at approximately one to three percent through 1993. Data pertaining to staffing for the Camden and other New Jersey offices cannot be individually obtained through the FBI's automated personnel system.

After one year of the NYDP, the tenure of SA personnel assigned to the New York office increased, while the tenure of those agents assigned to the Newark office decreased. The table below depicts the tenure of SAs assigned to the New York and Newark offices at the end of 1988 and 1989:

Average Tenure Of Special Agents Assigned
To The New York Office And Newark Office

	1988 (in months)		1989 (in months)	
	New York	Newark	New York	Newark
SA (GS 10-13)	97	126	103	117
SSA (GM 14+)	190	169	202	174

The Office of Preference (OP) system was established to provide a means to reward agents for faithful service by transferring them to an office of their choice.

Prior to the NYDP, the number of Newark SAs listing the New York office as an OP was small. Newark office SAs have now markedly increased their representation on the New York office OP from four percent in 1987 to 14 percent in 1989.

Non-Supervisory Special Agent Transfers
Between Newark and New York

	1987	1988	1989	1990
New York to Newark	9*	1	0	0
Newark to New York	1	0	17	5

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*4 of these returned to New York in 1989.

With the recent extension of NYDP benefits to all New York support employees, it is also necessary to monitor support employee attrition in the Newark office. It is anticipated the support employees will request transfers into New York; although preliminary projections call for an increase in support resignation. It is anticipated employees will opt instead for more lucrative employment opportunities in the private sector. Thus far in 1990, there have been 13 support resignations from the Newark office.

QUESTION: How many requests for transfers to the New York office has the Bureau received since announcement of the demonstration project? Please provide such figures on a State-by-State basis. How many requests for transfers to the Newark office has the Bureau received during the same

period? How does the number of requests for transfer to New York compare with requests for transfer to Bureau office in other large cities? Please provide answers to relevant inquiries in questions 2 and 3 as they relate specifically to A) senior agents B) support staff.

ANSWER: The following information is based only on Office of Preference (OP) transfer requests. Additional requests may be received throughout the year; however, no means currently exist to track these requests. Rather, each request is handled on an individual basis.

Requests for Office of Preferences transfer are received in January and July of each calendar year. Forty-nine requests have been placed on the New York OP list since January 1, 1989. The following is a breakdown by office.

Office	Number of Requests
Newark	30
Chicago	1
Rome	1
Philadelphia	1
Quantico	1
Los Angeles	1
Washington Metropolitan	5
Albany	1
New Haven	4
FBIHQ	1
San Juan	2
Kansas City	1
TOTAL	49

Six requests have been placed on the Newark Office of Preference list during the same timeframe.

Office	Number of Requests
FBIHQ	1
Denver	1
Springfield	2
Chicago	2
Washington Metropolitan	1
TOTAL	6

Since January 1, 1989, the total number of transfers into the New York office is 105 with 26 being New Agent transfers and 24 being OP transfers. Newark's total number of transfers is 66 with 18 being New Agent transfers and five being OP transfers. While this is not all-inclusive, it does represent those types of transfers which are prefaced by requests for assignment to a specific division.

The following list reflects the total number of OP requests since January, 1990, for the FBI's top fifteen offices (major offices), i.e., the number of actual requests for transfer to these offices:

Division	Office of Preference Requests (1/90)
Atlanta	125
Baltimore	96
Boston	76
Chicago	66
Cleveland	43
Dallas	61
Detroit	40
Houston	37
Los Angeles	31
Miami	89
Newark	23
New York	22
Philadelphia	104
San Francisco	46
Washington Metropolitan	49

Support Personnel

	Requests For Transfers In			Requests For Transfers Out		
	1988	1989	1990	1988	1989	1990
New York	25	1	7	19	0	7
Newark	7	3	4	1	0	2

These figures do not give a clear picture of the impact of the New York demonstration project inasmuch as most of the movement of support personnel in and out of New York involved the movement of special support personnel. The remaining requests were from individuals requesting to return to their original homes. Additional salary was not an issue in their decisions; some of these employees accepted demotions from former higher paying positions to return home.

QUESTION: How much does it cost to move an agent? How much to train an agent?

ANSWER: The costs to move and train an agent during 1989 were as follows:

Recruitment and Hiring	$17,388
Training at the FBI Academy	18,594
Transfer from Training to Small Office	9,260
Transfer from Small to Large Office	27,996

QUESTION: How many resignations have occurred among senior officers in New York since the implementation of the pay demonstration? In the Newark office? In the Camden office? How many resignations occurred in the two years prior to implementation of the demonstration project in New York? How many in Newark? How many in Camden?

ANSWER: This information is provided in a previous question. Data for the Camden Office cannot be individually obtained from the FBI's automated personnel system.

QUESTION: How many resignations have occurred among support staff in New York since implementation of the pay demonstration project? In Newark? In Camden? How many resignations occurred in New York in the two years prior to implementation of the demonstration? In Newark? In Camden? How many of those who resigned worked less than six months?

ANSWER: Following is a chart which provides the information requested:

Support Employee Resignations

New York

FY	Total Resign.	Summer Employees Resignations	Total Resignations Excluding Summer With Less Than 6 Months
1985	100	0	9
1986	103	0	14
1987	84	0	6
1988	114	26	20
1989	120	37	7
1990	24	0	1

Newark

FY	Total Resign.	Summer Employees Resignations	Total Resignations Excluding Summer With Less Than 6 Months
1985	15	0	0
1986	17	0	2
1987	19	0	1
1988	29	7	3
1989	30	8	0
1990	13	0	0

Camden RA, Philadelphia Division

FY	Total Resign.	Summer Employees Resignations	Total Resignations Excluding Summer With Less Than 6 Months
1985	0	0	0
1986	1	0	0
1987	1	0	0
1988	0	0	0
1989	0	0	0
1990	0	0	0

Hate Crime Statistics Act

QUESTION: Last week President Bush signed into law the Hate Crime Statistics Act (HCSA), legislation which will require the Attorney General to collect data on criminal activity motivated by prejudice. Supporters of the HCSA have indicated their strong preference for the HCSA to be implemented through the Uniform Crime Reporting (UCR) program and were pleased to learn that the Advisory Policy Board of the UCR had unanimously agreed to recommend to the Attorney General that the UCR accept responsibility for this collection.

The Associated Press has reported that tight budget requirements may result in the elimination of the Uniform Crime Reporting program department, which had been cited as the repository for hate crime data.

What is the likelihood that the UCR program will not be available for hate crime data collection?

ANSWER: The FBI has recently undertaken many new responsibilities. In order to provide for these additional responsibilities, I have had to consider the only two options open to the FBI, which are to reduce existing programs or decrease responsibilities. One of the programs the FBI has considered for reduction is the UCR program because it does not directly support the Bureau's investigative programs. However, I have not proposed eliminating the UCR program.

QUESTION: Does the FBI share Congress' commitment to implement the Hate Crime Statistics Act through the UCR program?

ANSWER: The FBI fully supports the concept and desirability of collecting data on crimes motivated by hatred. The FBI believes that the statistical collection of crimes that are motivated by hate/bias and relevant detail data regarding the nature of the offense, the offender, and the victim would well serve several national interests. These crimes are often not only heinous in themselves, but their scope reaches much further than the individual victims at whom they are directed. In fact, every member of the victim class within the community is psychologically victimized.

In addition to allowing lawmakers and government executives at every level to address the hate issues, reliable data would be useful to law enforcement in responding to the specific and unique nature of crimes motivated by hate/bias. Law enforcement officers would become more sensitive to the issue, and community service groups could apply resources more effectively and efficiently.

The FBI's Uniform Crime Reporting Section, anticipating the passage of legislation, has been assessing the alternate ways of collecting this data for approximately the last three and a half years. States and cities pioneering this effort have been visited and many knowledgeable groups consulted. Definitive plans have been made and articulated to State-level UCR programs.

QUESTION: What level of funding would it take to collect this data?

ANSWER: The entire UCR function within the FBI, which would serve as the vehicle for hate crimes collection, operates at an annual budget level of approximately $4.5 million. Staffing consists of 85 support employees (including 23 professionals) and 7 special agents (supervisory and management). It has been projected that an additional 7 employees (3 professional level) at a total cost of approximately $500,000 annually will be required to implement and administer the collection, analysis, and publication of hate crimes statistics.
This cost estimate only considers the personnel side of the program, and does not include the equipment costs of the program.

QUESTION: Is the FBI prepared to fund the program at that level?

ANSWER: The FBI has operated the UCR program for 60 years. The FBI's 1991 request to Congress reflects a total funding level of approximately $4.7 million. This budget request was formulated prior to passage of the Hate Crime Statistics Act. It has been projected that an additional seven positions (three at the professional level) at an annual cost of approximately $500,000 would be required. The FBI is considering different options to fund these additional requirements.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

Relocation of the Identification Division

QUESTION: Why is the FBI considering relocating its Identification Division to an area outside the District of Columbia?

ANSWER: For over a decade, the Identification Division has been experiencing significant problems with high employee turnover (about 15 percent annually) because of low salaries and competition with the private sector, resulting in shortages of personnel. Advances in technology have outdated the automation utilized in maintaining Identification Division records, identifying fingerprints, and timely reporting of results. Therefore, the present fingerprint identification operation is obsolete and incapable of handling all the present and future nationwide technological demands.

Increased demands in the areas of drug trafficking, violent crime, and felons seeking firearms must be met with the automation that only a new and revitalized Identification Division may provide. A new Integrated Automated Fingerprint Identification System (IAFIS) featuring "live scan" - real time electronically transmitted (paperless) fingerprint data is an essential element to the progress of law enforcement to overcome the challenges of criminals both in the present and future.

QUESTION: What is the status of the FBI's efforts in this area?

ANSWER: The FBI Contract Review Unit is in negotiations with an architectural and engineering firm for the final cost estimates for the FBI Identification Division Relocation Study. By September 1, 1990, the initial phase of this study will provide a projected cost estimate for the entire relocation effort, a recommendation for the site location, and the actual cost of this site.

QUESTION: What will be the impact of relocation on FBI employees assigned to the Identification Division?

ANSWER: The impact of the relocation on FBI employees is a paramount concern within the Identification Division Relocation/Revitalization project. From project start in May 1990 to its expected conclusion in 1995, the FBI plans to conduct analyses and provide specialized employee services through the use of a professional human resources contractor. These services would encompass:

- Career decision-making sessions to discuss employment choices in the relocation and give people a process useful in arriving at a decision;
- One-on-one employee surveys to ascertain interest in relocating and concerns about the project and to

gather critical relocation information (for example, housing and education requirements);

- For those employees choosing not to relocate, counseling on transfers to another division within the FBI or another Federal agency, the job market outside the Federal sector, retirement, or self employment; and

- Stress management programs to help employees and their spouses deal with the many matters (family, personal, and professional) which occur when facing critical imminent decisions such as a relocation.

The need to relocate Identification Division employees would occur in phases as the new facility becomes completed and operations for various aspects of the fingerprint identification program are shifted. The human resources study will identify what types of employees are needed at these various stages. At this time the full impact of relocation cannot be further quantified.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Fingerprint Identification

QUESTION: As you are no doubt aware, the pending supplemental includes $185 million for the FBI's Fingerprint Identification automation project. What are the current and outyear costs of fully funding the automation project so that we can provide prompt responses to State and local law enforcement officers?

ANSWER: Since the time of the hearing, a supplemental appropriation was enacted into law on May 26, 1990 which included $185 million to relocate and upgrade the FBI's Identification Division. The FBI has tentatively selected an architectural and engineering (A&E) firm to conduct a study and to provide cost estimates for the project. The preliminary cost estimates are anticipated by September 1990; final cost estimates are expected by May 1991. These cost estimates will be forwarded when the study is completed.

General Budget

QUESTION: Your opening budget narrative explains that you are asking for a net program increase of $39.8 million in funding and 545 positions above the 1991 base level funding, and a program decrease of 383 workyears. Could you provide an overview of why your budget requests an increase of 545 positions and a decrease of 383 workyears?

ANSWER: The 1991 budget proposes program increases totalling 1,285 new positions (501 agents and 784 support) and 357 new workyears (136 agents and 221 support). At the same time, the budget proposes program decreases of

740 positions (252 agents and 488 support) and 740 workyears, primarily as a result of reductions intended to meet targeted budget levels established by the Administration. As you have noticed, the workyear decreases more than offset the increases, leaving a net decrease in agent workyears.

In order to fund increased administratively uncontrollable overtime costs during 1991, the FBI will delay hiring and training new agents and support employees in order to be at the higher position level by the end of 1991, but staying within its workyear and budget authority levels. This will be accomplished by applying a higher lapse rate between positions and workyears. Ordinarily, when new positions are proposed, funding is requested at a rate of 50 percent, i.e., one workyear for every two positions. However, this budget differs. To fund the increased cost of AUO, the lapse rate was increased from 50 to 75 percent for most programs except drugs, in which positions are lapsed at 65 percent.

QUESTION: How does your budget request to Congress differ from your request to the Office of Management and Budget?

ANSWER: In total, the FBI's final budget request to OMB reflected 24,529 permanent positions and $1,972,375,000. The request presented to Congress includes a total of 21,643 permanent positions and $1,640,237,000.

The FBI's budget request to OMB included base level adjustments totaling $166,810,000 including a request to fund increased administratively uncontrollable overtime costs and the 1991 pay raise. The base adjustments included $159,319,000 in mandatory increases and $7,491,000 in non-policy decreases. The request to Congress includes base-level adjustments consisting of a net reduction of 38 positions and an increase to the base of $100,956,000.

The FBI's request to OMB included program increases totaling 2,141 positions and $255,627,000. The request to Congress includes program increases of 1,285 positions and $81,752,000. Program reductions for all FBI decision units, with the exception of the Drugs program, are also requested to meet deficit reduction level established by the Administration. These reductions total 514 positions and $27,322,000. The request to Congress includes net program increases of 545 positions and $39,837,000.

Drugs

QUESTION: Your statement points to the requested increase of 333 positions, 119 workyears, and $19.2 million for drug program funding. This includes 94 agents for field investigations. Given the extent of the Nation's drug problem, will this increase have a noticeable impact on our success in the war on drugs?

ANSWER: The requested additional resources for the FBI's Drug and Organized Crime Drug Enforcement Task Force (OCDETF) investigative efforts would enable the FBI to address an estimated 50 percent of the over 550 major multi-jurisdictional drug trafficking organizations identified to date. Currently, approximately 40 percent of these major multi-jurisdictional drug trafficking organizations involved in the manufacture, importation and distribution of illicit drugs are addressed. These organizations include Colombian/South American, Mexican, European/Italian and Asian drug trafficking groups. Targeting these organizations is in furtherance of the FBI's National Drug Strategy (NDS) and OCDETF objectives of reducing the incidence of illegal drug trafficking by addressing the most virulent international and/or multi-jurisdictional drug trafficking organizations and other crimes related to their conspiracies.

The additional resources requested are necessary to accelerate implementation of the NDS based on the following: current assessments and projections of drug trafficking problems; estimates of FBI resources required to address them; and the current ability of the FBI to recruit, process, train and deploy qualified personnel for the Drugs program in 1991.

White-Collar Crime Program

QUESTION: For White-Collar Crime (WCC), you are asking for an increase of 375 positions and $9.1 million above the 1991 base. However, you are also proposing a decrease of 65 positions. Where are these decreases being taken, and why?

ANSWER: The WCC program will be reduced by 44 agents and 21 support positions and workyears in 1991, to meet budget deficit reduction levels established by the Administration.

The following table reflects how these reductions will be taken within the WCC Program:

	Agents	Support
DOD Procurement Fraud	21	9
Bank Fraud and Embezzlement	8	3
Fraud by Wire	12	5
Bankruptcy Fraud	3	1
Accounting Technicians	...	3
TOTAL	44	21

QUESTION: Your statement refers to your success in exposing corruption in the commodities trading industry, and in defense procurement fraud cases. These are complex and technical matters. Could you give the Committee an idea of the extent to which other agencies contribute to such investigations?

ANSWER: Other Federal, State, and local law enforcement and regulatory agencies frequently contribute to the success of our undercover operations. Their support and assistance is, in many cases, invaluable.

Two of the cases mentioned earlier serve as excellent examples of successful investigation of complex matters through cooperative efforts. "Hedgeclipper" and "Sourmash" involved investigations of the fraudulent trading activities taking place at the commodities markets in Chicago.

The FBI has had a longstanding relationship with the Commodity Futures Trading Commission (CFTC) which has proven beneficial time and again in investigations of "boiler-rooms." Since the 1970's, when the FBI began investigating such cases, the CFTC has been a great partner, not only referring cases for investigation, but by providing expert technical advice and testimony as well.

From the outset of "Hedgeclipper" and "Sourmash", the CFTC was an active partner in the conception, planning and evolution of these extremely sophisticated operations. They supported these investigations with substantial commitments of personnel which contributed materially to their eventual success.

Throughout these protracted investigations, the CFTC was always available. The technical expertise of CFTC personnel was essential in developing the elements of the crimes in an environment unfamiliar to most. Moreover, their expert testimony has proven to be invaluable in the prosecutive phase of these cases.

Hate Crime Statistics Act

QUESTION: Last month, Congress enacted the Hate Crime Statistics Act. This Act requires the Department of Justice to gather and publish data about crimes manifesting evidence of prejudice based on race, religion, ethnicity or sexual orientation.

Do you anticipate that this function will be turned over to the FBI?

ANSWER: Yes, the Assistant Attorney General of the Civil Rights Division in the Department of Justice, has publicly stated that intent.

QUESTION: What impact would this have on your budget?

ANSWER: It has been projected that the costs for the FBI to collect hate crimes would be approximately $500,000. This would provide 7 additional employees (3 professional level) and would satisfy the additional administrative expenses.

QUESTION: Will the information be of assistance to law enforcement agencies?

ANSWER: Yes, in addition to allowing lawmakers and government executives at every level to address the hate issues, reliable data would be useful to law enforcement in responding to the specific and unique nature of crimes motivated by hate/bias. Law enforcement officers would become more sensitized to the issue, and community service groups could apply resources more effectively and efficiently.

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF TERRENCE M. BURKE, ACTING ADMINISTRATOR

PREPARED STATEMENT

Senator HOLLINGS. Testifying on behalf of the DEA is the acting Administrator, Mr. Terry Burke. The 1991 budget request for the DEA is $700 million. This represents a $151 million, or 28-percent increase over last year, however, DEA will also receive an additional $91 million from the organized crime drug enforcement reimbursable funds.

That will give us a combined level of funding for 500 new special agents, 501 new special agents. Mr. Burke, we welcome you, and we would be delighted to hear from you at this time. Your statement will be included in its entirety, and you can deliver it or highlight it as you wish.

Mr. BURKE. Yes, Mr. Chairman. Thank you very much. I have a full, detailed statement for the record and I have a brief introductory statement, if I might read that to you.

Senator HOLLINGS. All right, sir.

[The statement follows:]

STATEMENT OF TERRENCE M. BURKE

Mr. Chairman and members of the subcommittee: I am pleased to appear today in support of the Drug Enforcement Administration's (DEA) 1991 budget request.

The President's 1991 budget currently before you contains the largest program increase in DEA history. It includes enhancements of 744 positions and $122 million in directly appropriated funds, for a total of 6,112 positions and $700 million, plus an additional enhancement of 126 positions and $21 million as part of the Organized Crime Drug Enforcement (OCDE) Task Force budget request. This enhancement will bring DEA's strength to a total of 7,105 positions, including 3,692 special agents, and nearly $800 million.

While this represents only point zero five percent of the total proposed Federal budget, it is a significant growth in DEA's total resources. Despite our growing budget and the changing and expanding mission DEA faces, DEA has managed our operations effectively and efficiently, allowing us to address the changing priorities and vulnerabilities of the drug trade. We are, however, no longer a small agency and we must look to the future in continuing our proactive style of management. Therefore, DEA is undergoing a period of review and consultation to determine how we can best meet the challenging environment facing drug law enforcement.

The first step in defining the future direction of DEA is to modify our internal planning and budgeting processes to ensure that they comply with the overall strategy and goals of the administration. With the assistance of the Defense Department's Center for Low Intensity Conflict (CLIC), DEA is redefining its organizational statement and structure to fit our evolving role in the National Drug Control Strategy. We are establishing and modifying operational plans that both anticipate and effectively react to the dynamic environment of drug law enforcement and support the National Drug Control Strategy. One excellent example of what I mean by being proactive in drug law enforcement is the mounting heroin issue. Intelligence indicates that heroin is making a definite resurgence and DEA has already initiated a number of programs and investigations designed to stop the flow of heroin before it becomes as prevalent as crack is today.

At the operational level, DEA is enhancing its participation in the OCDE Task Force program. DEA policy now requires that top-level cases be nominated to the OCDE Task Force program in the early stages of an investigation in order to take full advantage of the knowledge, experience, resources, investigative jurisdictions, and prosecutorial support of all agencies participating in the OCDE Task Force program.

Further, the direction of our Special Enforcement Programs (SEP's) and Special Enforcement Operations (SEO's) is becoming more centralized. By continually striving to improve communications between headquarters and field management, a better balance of headquarters policy direction and field operational execution is being developed. Each SEO serves as the umbrella for hundreds of investigations, national and international in scope, against various components of major trafficking organizations. Our SEP's have resulted in innovative programs against specific problems, such as domestic marijuana production, transportation of drugs, and crack cocaine. The operations are truly the leading edge of drug enforcement and represent the evolving mission of DEA.

DEA assigns manpower to those areas where intelligence indicates the problem is most severe. In most cases, the drugs consumed by Americans are either imported to or transshipped through major cities. Consequently, DEA efforts are targeted at these areas, which include the high intensity drug trafficking areas.

DEA is also looking closely at its rural area drug enforcement strategy. DEA's policy now calls for greater focus on resident offices to better address the problems in rural areas. Resident offices are more geographically dispersed than DEA divisions, but still concentrate DEA's resources in order to maximize our impact. This appears to be a more effective strategy than staffing each of the 64,000 cities and towns of the United States with one or two agents. In addition, resident offices link state and local resources with national and international networks of information and experience. Therefore, special agent staffing is being increased in our 106 resident offices. Evidencing this commitment, 36 percent of the agent positions in DEA's 1990 enhancement were distributed to district and resident offices and posts of duty.

DEA is also concentrating on improving training and career development for its agent, intelligence, diversion, and administrative support staffs to ensure that our work force is ready to meet the challenges it confronts. This includes increasing DEA's participation in the National War College, the Army War College, in Harvard University's Senior Managers in Government Seminar, the Brookings Institute, and especially, in our first-line and mid-level supervisors training.

A select team of field managers, street agents, and headquarters planners are meeting regularly to address and seek solutions to the problems we face in the coming century. We are also confronting one of our major challenges as an agency of the federal government. That is, to improve and institutionalize an affirmative action and recruiting program that insures that the face of the DEA work force reflects the broad spectrum of races and ethnic origins that comprise this great nation. I can guarantee you that the men and women of DEA are committed to this goal.

Finally, in our effort to meet the challenge of drug abuse, DEA has been caught in the trap of trying to be all things to all people. The breadth of operations and programs that DEA has become involved in has grown tremendously in the past few years. In response, the agency has become much more of its own watchdog in terms of its finances. In 1989, DEA lapsed only 28 work-years and $140,000 out of a total budget of 5,711 work-years and a $535 million. In plain language, we obligated over 99.9 percent of the dollars allocated by the Congress. We said that we needed the resources, the administration and Congress supported our request, and DEA put the resources to work to the fullest extent possible. When you combine this with the fact that DEA seized nearly $980 million in trafficker assets in 1989—about two times our budget—you have evidence of an agency that is not only responsive in its mission, but fiscally responsible to the American public that supports it.

DEA's organizational improvements, operational initiatives, and our ability to manage our resources are critical to meeting the challenges ahead. The drug problem in America is an epidemic. It crosses the entire spectrum of our society, affecting all walks of life, all age groups, and all disciplines. It is not going to go away in the short term. We must steady ourselves for a long battle to control the drug problem. It will be an expensive battle, but our most precious national resource—the lives and futures of our children—are at stake. This is why I am here today—to elicit your continued support in a battle for this country's and, ultimately, this world's future. To put this in the perspective of DEA's 1991 budget request, I will briefly describe our three funding initiatives.

The first is to expand all facets of DEA's investigative and administrative support infrastructure. DEA requests 121 positions and $46 million to ensure that the agency can provide adequate and responsive support to DEA's investigative operations. This includes increases to professional, administrative, and technical support staffs to ensure that they can keep up with the workload demands generated by agents and other core personnel.

The second initiative addresses DEA's primary investigative mission and the resource requirements of the enforcement programs. DEA requests 601 positions, including 366 special agents, and $71 million to target and immobilize major trafficking organizations. This request includes agent increases for the general enforcement programs of most domestic divisions, plus increases for new state and local task forces and special enforcement operations, as well as enhanced cannabis eradication and chemical control efforts. The Department's Consolidated OCDE Task Force budget request includes an additional increase of 93 DEA special agents that will be dedicated to major investigations throughout the country.

The third initiative is the expansion of DEA's foreign drug suppression and enforcement program. This initiative includes 22 positions and $5 million. The enhancement for DEA's international efforts seeks the establishment of a new office in Salta, Argentina, and staffing increases for 13 existing offices around the world.

Under the leadership of President George Bush, Attorney General Dick Thornburgh, Dr. William Bennett, and with the assistance of our law enforcement colleagues at all levels of government both here and abroad, DEA is making progress in the war on drugs. It is not, however, without daily risks and an unfortunate human price. The sacrifices of DEA Special Agents Everett Hatcher and Rick Finley, and New York State Trooper Joseph Aversa, all killed in 1989 in the line of duty, and the dedication of former Administrator Jack Lawn, who retired from Federal service last month, will be remembered by DEA personnel worldwide.

DEA will continue to fight, however our potential for success is greatly dependent on your assistance. You have been our supporters throughout the years and I urge you to continue to assist us in meeting the challenge that the scourge of drug abuse presents to this nation.

Mr. Chairman, I appreciate this opportunity to discuss the future of DEA and our budget request. I would be pleased to answer any questions you may have.

OPENING STATEMENT

Mr. BURKE. Mr. Chairman and members of the subcommittee, the President's 1991 budget includes enhancements of 744 positions and $122 million in directly appropriated funds for the DEA. This enhancement, combined with the resources requested in the Department's organized crime drug enforcement task force [OCDETF] budget, will bring DEA strength to a total of 7,105 positions, including 3,692 special agents and nearly $800 million.

GOALS AND INITIATIVES

Before I discuss the components of this request, I would like to take a few minutes to describe some of the initiatives that are defining DEA's future direction. First, DEA is modifying its internal planning and budgeting processes to ensure that they comply with the overall strategy and goals of the administration, the Department of Justice, and DEA management.

This includes redefining our organizational statement and structure to fit our evolving role, developing planning and budgeting processes that more closely reflect and support the priorities of senior management and the agency mission, and establishing and modifying operational plans that both anticipate and react to the dynamic environment of drug enforcement.

The second step is improvements at the operational level. DEA is modifying internal policies to require that top-level cases be nominated to the organized crime drug enforcement task force program in the early stages of an investigation in order to take full advantage of the knowledge, experience, resources, investigative jurisdictions, and prosecutorial support of all agencies participating in the OCDETF Program.

Further, the direction of our special enforcement operations and programs is becoming more centralized to balance headquarters policy direction and field operational execution through improved communications between headquarters and field managers. These types of initiatives allow us to be more proactive in drug enforcement.

An excellent example of what I mean is the mounting heroin issue. The evidence indicates that heroin is making a definite resurgence, and DEA has already initiated a number of programs and investigations designed to stop the flow of heroin before it becomes as prevalent as crack is today.

Third, DEA is looking closely at its rural area drug enforcement strategy by placing greater focus on resident offices. Resident offices are more geographically dispersed than DEA divisions, thereby providing greater coverage. Further, they link State and local resources with national and international networks of information and experience.

Therefore, special agent staffing is being increased in DEA's 106 resident offices, and the resident agent-in-charge positions are being upgraded to the senior level of grade 14. In 1990, 36 percent of our new agent positions were distributed to district and resident offices and posts of duty.

In our effort to meet the challenges of drug enforcement, DEA has been caught in the trap of being all things to all people and, out of necessity, has become much more of a watchdog in terms of our own finances. In 1989, we spent over 99.9 percent of the dollars allocated by the Congress. When you combine this with the fact that DEA seized nearly $980 million in trafficker assets in 1989, about two times our budget, you have an agency that is not only responsive in its mission, but fiscally responsible to the American public that supports it.

1991 REQUEST

DEA's organizational improvements, operational initiatives, and our ability to manage our resources are critical to meeting the challenges ahead. To put this in perspective of DEA's 1991 budget request, I will briefly describe our three funding initiatives.

The first is to expand all facets of DEA's investigative and administrative support infrastructure. DEA requests 121 positions and $46 million to ensure that the agency can provide adequate and responsive support to DEA's investigative operations.

The second initiative addresses DEA's primary investigative mission and the resource requirements of the enforcement program. DEA requests 601 positions, including 366 special agents and $71 million, to target and immobilize major trafficking organizations.

The Department's consolidated OCDE budget request includes an additional increase of 93 DEA special agents that would be dedicated to major investigations throughout the country.

The third initiative is the expansion of DEA's foreign drug suppression and enforcement programs. This initiative includes 22 positions and $5 million. The enhancement for DEA's international efforts seeks the establishment of a new office in Salta, Argentina, and additional staffing increases for 13 existing offices around the world.

DEA's progress on the war on drugs is not without daily risks and unfortunate human price. The sacrifices of DEA's special agents Everett Hatcher and Rick Finley, and New York State Trooper Joseph Aversa, all killed in 1989 in the line of duty, and the dedication of former Administrator Jack Lawn, who retired from Federal service last month, will be remembered by DEA personnel worldwide.

We have been supported throughout the years, and I urge you to continue to assist us in meeting the challenge that the scourge of drug abuse presents to this Nation.

Mr. Chairman, I appreciate the opportunity to discuss the future of DEA's budget request, and I would be happy to answer any questions that you may have.

AGENT SHORTAGES

Senator Hollings. We had a hearing, Senator Rudman and myself, down in South Carolina, that showed two problems. One, we have a shortage of DEA agents; and two, we have not assigned agents full time to the OCDE task force in the State. What about the shortage? Have we taken up that shortage?

Mr. Burke. Yes, sir; we are going to be opening a new office in Florence, SC. I am looking forward to inviting you to the opening of that office in the very near future.

Senator Hollings. As a defendant or as an observer? [Laughter.]

Mr. Burke. As a celebrant, sir.

Senator Hollings. But are we going to get additional agents? Because what we have, they are doing a good job, but they have been shortchanged down there.

Mr. Burke. Including those who will be in Florence, we have a total of 15 agents now dedicated to South Carolina, and that is a considerable increase. I am hoping, if our budget request comes through, that we will be able to increase that number.

Senator Hollings. On the assignment to the organized crime drug enforcement task force, they were looking, hopefully, to assign a DEA agent to work full time with that.

Mr. Burke. Yes, sir; we have a system that has just been fully accepted by the Department. I don't know that it is that well understood. Basically, sir, it is this: any DEA agent can initiate an investigation in his or her area of jurisdiction that has a potential for becoming an OCDE case, an organized crime case.

The idea here is that the agent initiates the case and develops it to the point that it meets the OCDE case guidelines as a major investigation. That agent and supervisors meet with the responsible U.S. attorney or assistant U.S. attorneys and other agency representatives and proposes that investigation as an OCDE investigation.

Now, once that case is accepted by the OCDE group, the original agent or agents who started that investigation, carry on with that investigation throughout its term in cooperation with the other people. Rather than have that original agent, who has all that wealth of information, turn the investigation over to a specialized group, we utilize the experience, the enthusiasm, the informants, and intelligence already developed by that agent and carry it with that agent, to the OCDE process.

EPIC VERSUS NATIONAL INTELLIGENCE CENTER

Senator HOLLINGS. We have got the efforts of the El Paso Intelligence Center. The committee has been informed that from time to time it is working extremely well. Now there is a proposal for a National Drug Intelligence Center costing $86 million for the drug czar. Is that going to duplicate what we have, or is there something wrong with the El Paso Center that we have now?

Mr. BURKE. No, sir; I think what we are going to have is two different things. First of all, a study is being conducted by the Attorney General in terms of exactly what form and what shape that strategic intelligence center should take, so nothing is locked in concrete yet.

Senator HOLLINGS. What is wrong with El Paso?

Mr. BURKE. El Paso is a tactical intelligence center for interdiction information, such as when a suspect aircraft or a ship is spotted by some element of law enforcement and that intelligence feeds into the center. That aircraft is identified, the tail number comes into EPIC's computer and it is distributed from there through the computer system to all the various support organizations and data bases for information or action.

Senator HOLLINGS. What would the $86 million center do, then, that this center does not?

Mr. BURKE. What I believe is intended here, Senator, is that they are going to concentrate on strategic intelligence. They are going to take a look at the entire Latin America area, the total scope of the cartels in Latin America, for instance, and identify their trafficking routes, identify their systems of moving money, and so forth.

Then each of the agents who participate will be tasked by the strategic center to work a certain segment of that identified trafficking system.

Senator HOLLINGS. We better get a strategy here in Washington to try to control ourselves, because we are going to start putting agents all over the world. A $86 million strategy center——

Mr. BURKE. Strategic, sir, not strategy.

Senator HOLLINGS [continuing]. Strategic is strategy—to chase around all the foot paths down in Peru, Bolivia, and everywhere else to see how the drug lords are working, you and I will be dead and gone before we get anything done.

Mr. BURKE. If I may, sir, the concept is to take a look not just at South America, but to take a look at the impact of the heroin coming into the United States from four or five international centers, Southwest Asia, Southeast Asia, Mexico, and others—Lebanon for instance. Then, to take a look at the entire picture to better enable the enforcement agencies to concentrate their resources or whatever area they can achieve the best impact on the entire major problem.

Senator HOLLINGS. You need an $86 million center for that?

Mr. BURKE. It is believed by the administration that this capability will assist our effort, sir.

AIR CENTER

Senator HOLLINGS. With respect to an airfield, we are going to build a $17 million airfield down at Fort Worth. Up here, we are closing airfields right and left. Can you get one of those that is going to be closed instead of building a new one?

Mr. BURKE. Sir, that has been looked into. We researched very, very carefully the sites and locations for the air center, which we very badly need for our fleet. We have totally outgrown the Addison facility and security factors must be taken into account. The fact that much of our air activity is from the United States down to Latin America was a principal factor in this.

We looked at several military sites that may become available to us. None of them meet the needs that we have when looking at the overall criteria for establishing a new air center. I can provide additional information on that.

Senator HOLLINGS. I will yield to my colleague, but you can look at Myrtle Beach for starters. Incidently, Charleston, SC, is 300 miles closer to Caracas, Venezuela than New Orleans, and Texas is way over further. So if you want to get down to Latin America, you can look at that Myrtle Beach air base they are trying to close, see what happens. We might keep it open. I don't know. They are restudying it. I am serious about this. I can't see us putting money into building new air bases while we are putting money in to close them as fast as we can, talking about the peace dividend.

Senator Rudman.

ALVAREZ CASE

Senator RUDMAN. I am sure that you are aware of all of the press on the *Alvarez* case in the last 3 days.

Mr. BURKE. Acutely aware.

Senator RUDMAN. I am sure you are. I would just ask you this question: Are you personally satisfied at this point that your agency did not break any United States law or any Mexican law in that case?

Mr. BURKE. Yes, sir; we broke no U.S. law that I am aware of. I am absolutely firm on that. We did not have any agents actively participate in the planning or execution of that situation in Mexico.

Senator RUDMAN. Let me ask it again: I understand that the allegation is that these were not U.S. nationals that carried this out, but that the person who was working on behalf of DEA was on the DEA's payroll. My question is: Do you believe that, after talking with counsel within the agency, that no Mexican law was violated?

Mr. BURKE. Yes, sir; I am not aware of any Mexico law that was violated by the DEA. I would like to add, and I have to be circumspect here because of the trial that is commencing today in Los Angeles, but I can assure you of this: I spent last week at the IDEC, International Drug Enforcement Conference, in Mexico City and from the first hour that I was there, I was working with the deputy attorney general of Mexico, Mr. Javier Coello-Treyo, providing him with all the details that I knew of what had taken place and cooperating fully with them.

I believe that they became satisfied very early on, since we were initially approached in December of last year, that we believed we were dealing with Mexican officials throughout this operation.

Senator RUDMAN. I think that you understand that we are all deeply concerned about the *Camarena* case. We want to see it solved and those who are guilty brought to justice. But obviously, this Government cannot engage in any activities that are marginal in terms of lawfullness. I take your answer on the face, and I just hope you are proven correct.

I have some questions for the record, but in light of the timeframe here, I will not ask them.

Senator HOLLINGS. Senator Kasten.

RELATIONSHIP WITH THE MEXICAN GOVERNMENT

Senator KASTEN. With regard to this case that Senator Rudman is referring to, are you now satisfied that the law enforcement people in Mexico are giving you as much cooperation as you could possibly expect? Are they aggressively working with you, or do you still feel, as I know has been the case in the past, that they are dragging their feet, particularly with regard to members of the former administration. They were less than cooperative; they may be working up to the letter, but not the spirit, of the law or agreements or requirements.

Mr. BURKE. Senator, we have seen an absolutely remarkable turnaround in our relationship with the Mexican Government since the present administration took over, President Salinas.

As you are probably aware, in the last year of the previous administration we removed four of our special agents in charge of the various resident offices in Mexico because of either implied or direct threats against them and their families.

Since the new administration came in, we have not had a single threat against an agent. We give credit to two things for this: One, a much more proactive stance on the part of the new administration and two, much better cooperation on joint endeavors. The fact that the U.S. Government has aggressively pursued, as part of the Camarena investigation, the identity of those who perpetrated the crime. This has sent a very, very strong signal to the traffickers that they are biting off more than they can chew when they take on and assault a DEA agent, no matter where he or she may be in the world.

There are two things that have impacted on us in Mexico. First, regarding whether the current administration has been as forthcoming as say former members of their previous administration, I think that we have had some cooperation. We have had excellent sentences handed down to such persons as Caro Quintero. He received something like 150 years in total sentences.

We are moving forward to the point that they have made additional arrests; Aldana, the former senior MFJP official was recently arrested by the Mexican Government. We are going through a difficult period.

I think that the senior officials were not aware of the participation nor activity generated by some of the less senior officials in this document chain. However, now that they are aware of it, they are much more sensitive to our situation, and I expect that we will be discussing changes that will take place in our operations in Mexico. My feeling is, from my discussions with the Mexican attorney general and the deputy attorney general last week, that it will probably work out to the benefit of both of our countries.

Senator KASTEN. That was a pretty careful answer to my question, but can I summarize it by saying, we have seen improvement, but we are still not satisfied?

Mr. BURKE. I think we are seeing improvement, and I think we can expect to have additional improvement, sir.

Senator KASTEN. That is another careful answer to my question.

Mr. BURKE. Right.

Senator KASTEN. But we can say things that you can't. And I am not going to fuss with this anymore. I just want to say that you have, certainly, the support of this Senator and, I believe, the support of this committee with your comment about saying that they have got to understand that they might be biting off more than they can chew with regard to an attack on a DEA agent anywhere in this world, let alone a kidnapping and a torture and a murder.

CROP ERADICATION EFFORT

Let me ask you another very quick question with regard to cooperation with the State Department on the crop eradication effort in Central America. This is one of the programs that is partly in the State Department area, which is the 150 account, and partly in the State, Justice, and Commerce Subcommittee here.

It has been argued that the crop eradication program is not working as hoped and is not as cost effective in terms of a way of utilizing the scarce Federal resources that you, the FBI and all of us up here have in the war on drugs. In other words, if we have different ways to spend money on drugs, the crop eradication program might not be as high priority as some of the others.

Any comments on that program? Do you agree with the sense that I have, that it might not be the best way to spend our dollars, and if you do believe that resources should be shifted from the crop eradication effort to some other more effective means of combating drugs, what kinds of ways? Or maybe you disagree.

Are the priorities right and this should be continued, to put the same kind of money into crop eradication?

Mr. BURKE. I think that the success or failure of the crop eradication program has been totally dependent on the geographic and political location where it takes place. We have seen, in such places as Belize, very successful programs, because the host government was totally behind it. It was not impacting negatively on a large part of the population.

I think we have seen in Colombia a great reduction in the amount of marijuana currently available. This is a direct result of their very active and continuing marijuana eradication spraying program. Then we get into the situation with Peru, where eradication directly impacts on a large part of the peasant population.

There has been a shift away from eradication, I believe, in the State Department's position, both for safety and environmental factors. As part of the shift, more resources are being put toward interdiction of aircraft and vessel shipments out of the country, and toward the destruction of the laboratory facilities that have sprung up throughout the area.

There is still some eradication, but the eradication is directed at seed beds. In Bolivia, I think that there has been a combination of factors. The State Department has been able to maintain, up to now, a financial incentive program for the peasants in the area, the farmers who were growing the coca. Combining that with a very active program of interdiction and shutting down the laboratories the price of the coca leaves has been driven down to a point that it is below where it is economically feasible to grow.

We are giving some incentives for those people to go to other means of livelihood, not all of which are growing crops. Both in the Upper Huallaga Valley and the Chipare area of Bolivia, many of the people who are actually growing the coca are not farmers by trade nor by vocation. They are people with a gold rush mentality, who, due to the poor economy of the rest of the country, have come to that area for the one cash crop that is available.

So in those situations, eradication does work. We have an active program in the United States. We are stepping up our activities in such places as Hawaii. The only way to get rid of the marijuana in Hawaii is to go in and spray. We are picking up on the intensity of a program there.

Obviously, you have a much different political situation that will support it.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We will be submitting some additional questions from myself and from other Senators which we would like for you to answer for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

DEA/FBI Coordination

QUESTION: Drug investigations conducted jointly by DEA and the FBI in 1987 and 1988 comprised about 6 percent of DEA's total cases and about 16 percent of the FBI's total drug cases.

Why is this total relatively low? Considering that the agencies have achieved major successes with their joint investigations, wouldn't more joint operations be desirable? If not, why?

ANSWER: The DEA and FBI are the two primary Federal agencies with responsibility for enforcement of Title 21, United States Code. The DEA and FBI as separate and distinct agencies, utilize different investigative strategies to counter drug trafficking. For example, DEA's strategy relies heavily upon the use of confidential informants. By targeting individual traffickers, DEA has built, and will continue to build, a significant roster of informants within trafficking organizations. By comparison, the FBI, while focusing on the organization as a whole, will rely on the use of many agents to staff surveillance operations and Title III operations. While the strategies of these agencies are different, they also complement each other.

Many times, the case will dictate the type of strategy necessary. In situations where the other agency's strategy and resources will benefit an investigation, DEA and the FBI will work on the case jointly. Joint investigations have proven to be very successful, mainly because the agencies have pooled their individual strategies and resources.

Both DEA and the FBI take proactive roles in targeting traffickers and organizations and design their strategies accordingly; however, DEA must also design its strategies based on a reactive role. DEA, as the leading drug enforcement agency, must also respond to local needs for a Federal drug enforcement presence. This requires DEA to develop strategies at the street level as well as the major organization level.

Coordination of the drug war is proceeding well. There were 77 more joint DEA/FBI investigations in 1989 than in 1988. There have been numerous projects between the two agencies to enhance cooperation. One of the more successful ventures has been the Joint Intelligence Working Groups in the Miami and Chicago field offices of DEA and FBI. The FBI and DEA will continue to pursue joint operations when appropriate, in order to further the successes of these operations.

El Paso Intelligence Center (EPIC)

QUESTION: I understand the DoD has established a Joint Task Force (JTF) within one mile of EPIC in order to collect intelligence on drug traffickers. What is the relationship between EPIC and the Department of Defense's three Joint Task Forces?

ANSWER: The El Paso Intelligence Center cooperates with each of the four Joint Task Force (JTF) centers, providing information from EPIC databases to the JTFs in support of interdiction efforts. EPIC has a senior agent stationed at JTF 4 (Key West, Florida), JTF 5 (Alameda, California), and at NORAD (Cheyenne, Wyoming). EPIC interacts with JTF 6 (Fort Bliss, Texas) on a daily basis as the two facilities are only several hundred yards apart.

EPIC is the principal source of information for the JTFs. Typically, the JTFs feed information to EPIC on the location or itinerary of possible drug shipments. EPIC analyzes the information using its extensive law enforcement databases. EPIC informs the JTF if the shipment is regarded as suspect; if it is suspect, the JTF initiates interdiction operations.

DEA in South Carolina

QUESTION: During the subcommittee's field hearing in Columbia, South Carolina, Sheriff Smith from Orangeburg told us of an unfortunate experience he had with the DEA.

In the middle of 18-month major crack cocaine investigation, the DEA field office in Atlanta ran short of operating money and ordered the DEA agents in South Carolina to "park their cars" for a number of days. As a result, a deputy from the Orangeburg Sheriff's Office had to drive an hour and a half to pick up the agents each day. Your Assistant Special Agent In Charge of the Atlanta office said he had nothing to apologize for and would make the same decision if he ran short of money in the future.

In your opinion, do you believe this was a good management decision? Has the DEA at anytime been forced to park cars in Washington?

ANSWER: This incident took place near the end of a fiscal quarter when the allocated operating funds were very low, not only in our Atlanta Field Division but across the board in DEA. Management in the Atlanta Field Division made the decision to park one car in each of the offices of the division. DEA gives its field managers the latitude to make such resource decisions as they see necessary, and as long as lives are not endangered and investigations are not severely affected as a result, DEA will stand by these decisions.

DEA has been forced, on one recent occasion, to park cars in Washington. The Headquarters unit that provides automobiles for mail service and employees attending official functions (such as training activities at Quantico, VA) had to park cars near the end of a fiscal quarter when its operating funds were nearly depleted. This incident occurred at approximately the same time as the one in South Carolina.

Placement of New DEA Agents

QUESTION: The 1991 budget requests funding for 501 new Drug Enforcement Administration special agent positions, 150 of which will be assigned to "High Intensity" areas--Miami, Houston, New York, San Diego, Southwest Border and another 150 new agents will be assigned to Atlanta, Chicago, Dallas, Detroit, Philadelphia, Phoenix, Seattle, San Francisco, Washington, and Denver.

What are your thoughts on prioritizing High Intensity Drug Trafficking Areas while ignoring the mounting problems elsewhere? Hasn't it been shown that drug traffickers avoid enforcement efforts by simply moving their base of operations to areas where less enforcement exists?

ANSWER: To clarify, although DEA's total request (including the request for the Organized Crime Drug Enforcement Task Force program) is 501 agents, DEA's domestic enforcement request totals 300 special agents; two enforcement groups will be allocated to each of the five most active cities (150 agents total) and one enforcement group will be allocated to the next ten most active cities (150 agents).

The High Intensity Drug Trafficking Areas, as identified by the Office of National Drug Control Policy, not only have severe drug usage problems, but also are major trafficking points that supply illegal drugs to the rest of the country. The prioritization of these areas is necessary so that we can significantly impact drug trafficking networks at these source areas and prevent the flow of illegal drugs from entering into domestic trafficking routes.

Although many of our efforts are focused on the High Intensity Drug Trafficking Areas, DEA is not ignoring the increasing drug problems in other parts of the country. DEA is looking closely at its rural drug enforcement strategy and, as a result, DEA's policy now calls for greater focus on resident offices to better address problems in rural areas. Resident offices are more geographically dispersed than DEA divisions, but still include DEA's resources in order to maximize the impact. This appears to be a more effective strategy than staffing each of the cities and towns of the United States with one or two agents. In addition, resident offices link State and local resources with national and international networks of information and experience. In 1990, 36 percent of the new agent positions were distributed to offices below the division level.

In addition, the State and Local Task Force program allows DEA to provide the training, equipment and supervision needed to launch an effective attack against drug traffickers in these areas. DEA currently has 60 State and local task forces located throughout the United States both in major cities and rural areas. In 1989, this program was responsible for the arrest of nearly one-third of DEA's total violators considered to be the highest level drug traffickers. In addition, the State and local law enforcement organizations are entitled to an equitable share of the assets forfeited as a result of their participation in a task force case. In 1989, DEA shared approximately $138.5 million in forfeited assets with State and local law enforcement agencies. These funds are often used to expand law enforcement efforts in the local areas..

DEA believes that the best way to launch a successful attack on drug trafficking organizations in rural areas is through a combined effort of increasing staffing in major drug trafficking areas and in resident offices and increasing the participation of State and local law enforcement agencies through the task force program.

DEA Procurement Practices

QUESTION: A recent audit by the Department of Justice Inspector General's Office cited DEA for wasteful purchases. I understand the IG audit, prepared for the Attorney General, found that DEA had repeatedly violated Federal procurement rules by awarding no-bid contracts, overpaying its suppliers, and other procedural irregularities that cost the Government hundreds of thousands of dollars.

The DEA is requesting sizeable increases over last year's budget including large procurement requests. Can you comment on the IG report?

ANSWER: Due to the nature of DEA's mission, there are instances in which less than the desirable two-year leadtime is available for securing contracts. While best efforts are made to adhere to an "ideal" procurement strategy, it is not always possible as unforeseen health and safety situations arise suddenly and often without warning. For example, while a DEA aircraft was operating in a remote and potentially unsafe region, it required immediate repairs due to an accident. Due to the location, parts had to be obtained quickly and flown to the area. Certain contracting regulations had to be waived because of the emergency situation.

QUESTION: Is the DEA seeking competition in its procurement and avoiding sole-source contracts to better assure that the Government obtains quality purchases at the best possible price?

ANSWER: In virtually all cases, DEA meets the requirements outlined in the Competition in Contracting Act. DEA is in the process of reorganizing its contracting and procurement functions. DEA has converted the special agent supervisor position to a professional contract specialist position. An individual has been selected for this position and is currently awaiting a security clearance. In addition, a reorganization proposal is being drafted which would divide the existing unit into two entities by function, contract initiation and award, and contract maintenance and small purchases.

Chemical Diversion and Trafficking Act

QUESTION: Your budget requests 35 positions (28 Diversion Investigators and seven support staff) and $2,000,000 to implement the Chemical Diversion and Trafficking Act, enacted as part of the 1988 Drug Bill. What progress has DEA made in implementing the Act?

ANSWER: DEA has conducted a number of training programs throughout the United States to familiarize the chemical industry, DEA's investigative personnel, U.S. Customs Service agents, and Assistant U.S. Attorneys with the provisions of the Chemical Diversion and Trafficking Act and the implementing regulations.

DEA's domestic field personnel are conducting a survey to identify the target population of the Act, the chemical handlers. This includes on-site visits to these firms to explain the provisions and regulations of the Act to management, as well as soliciting their cooperation in a number of voluntary measures, including identification of their overseas clientele.

In addition, as part of the import/export provision, 61 of the 397 requests for "regular customer" status have been denied and four chemical shipments have been suspended.

QUESTION: Has the DEA had any success in using the Act to arrest drug traffickers?

ANSWER: Yes, DEA has had success in using the Act to arrest individuals diverting listed chemicals for illicit purposes. For example, on August 30, 1989, a Federal grand jury in Dallas, Texas indicted two owners and two employees of two chemical companies who were selling listed chemicals used in the clandestine manufacture of methamphetamine. Also, on January 9, 1990, four men were arrested by DEA in Manhattan and charged with conspiracy to possess or distribute a listed chemical knowingly, or having reasonable cause to believe that the chemicals would be used in the illicit manufacture of a controlled substance. In addition, 20 gallons of ether and 32 gallons of acetone were seized.

Since the Act has been implemented, prices for listed chemicals and clandestinely manufactured methamphetamine have increased in some areas of the country. In Texas, for example, the price for one ounce of methamphetamine has doubled. The price of a 110-pound drum of phenylacetic acid, a precursor chemical used to manufacture methamphetamine, has more than doubled.

Furthermore, Domestic clandestine laboratory seizures which had been increasing dramatically in past years, rose only slightly in 1989.

QUESTION: Would more funding enable the DEA to more adequately address the chemical exportation problem?

ANSWER: DEA's 1991 request for 35 positions (28 Diversion Investigators and seven support) will be adequate to initiate implementation of the provisions outlined in the Chemical Diversion and Trafficking Act. When this initial phase has been completed, it is likely that more resources will be required to fully implement the Act.

QUESTION: Aside from reducing the demand for drugs, isn't the elimination of the chemicals used to produce cocaine and other dangerous drugs key to our efforts in drug control?

ANSWER: The Chemical Diversion and Trafficking Act provides DEA with an effective and relatively inexpensive tool in fighting the diversion of chemicals. The intent of this powerful legislation is not to eliminate chemicals that contribute to the production of cocaine, but rather to ensure that these chemicals are being used in a legitimate way by controlling their diversion into the illicit production of dangerous drugs.

The Chemical Act does not include all of the chemicals which are used for illicit purposes either in the United States, Latin America, or elsewhere. An effort was made to select only those which are (1) most commonly used, (2) most difficult to substitute, and (3) most critical to illicit drug manufacture.

In addition, the law applies only to listed chemicals when they are distributed or shipped at or above certain quantities. The purpose of this limitation is to avoid application of the law to small consumer-level transactions that are common daily occurrences. These quantities are sufficiently small to be of little value to illicit traffickers.

Elimination of listed chemicals would definitely impact the production of cocaine and other dangerous drugs; however, these chemicals have many legitimate uses.

Chemicals such as methyl ethyl ketone are also widely used in the manufacture of plastics, paints, and agricultural products.

1990 Assignments of New Agents

QUESTION: We provided the DEA with 222 new DEA agents in 1990. Where were these agents assigned?

ANSWER: After these agents complete training, 201 will be assigned to domestic offices (36 percent going to district, resident, and post-of-duty offices) and 24 to foreign offices.

QUESTION: Our 1990 bill mandated the restoration of two agent positions in the Charleston DEA resident office. At the time of the field hearings, one position had been restored. What's the status of the second?

ANSWER: The distribution of additional agents in 1990, as described above, includes two additional agents for the Charleston resident office. As you mentioned, one of the agent positions is currently filled. The second has recently been filled with a special agent who graduated from DEA Basic Agent Training Class on April 13, 1990.

Also, approval was given in April of this year to open a post-of-duty office in Florence, South Carolina. This office will be staffed by two special agents who will report to the Charleston resident office.

Training New DEA Agents

QUESTION: The 1991 budget requests funding for 501 new Drug Enforcement Administration special agent positions. Where are these agents going to be trained? When will they be "put on the street"?

ANSWER: The 501 new special agents will be trained at Quantico, in DEA's 14 week Basic Agent Training course. New agents will be trained throughout the year, in a total of 17 classes. We will begin to place new agents "on the street" in the second quarter of 1991; the bulk of new agents will receive their post assignments in the third and fourth quarters of 1991.

QUESTION: I've heard from my good friend Judge Heflin about your search for a training facility and he wants you down at Ft. McClellan. What are your thoughts on the use of the site?

ANSWER: Ft. McClellan, Alabama, was one of two sites (the other was Tift College, Georgia) seriously considered by DEA as a site for locating DEA training operations. DEA considered the Ft. McClellan option when it was assumed that additional space at Quantico would not be available.

The U.S. Marine Corps subsequently offered a parcel of 170 acres at Quantico to the Attorney General for expansion of DEA/FBI training facilities.

The Ft. McClellan, Quantico, and other options were assessed by the Department's Justice Management Division in their report on "Management Options Regarding Training Programs" prepared for the Attorney General in December, 1989. Justice and Treasury have agreed to do a joint follow-up study on the benefits and costs of alternative sites (Quantico, Glynco, McClellan Air Force Base, and possibly, other sites) for a new DEA training facility. An initial meeting on the study plan took place in late March. Treasury and Justice have exchanged proposals on a study agenda. Both Departments have designated Deputy Assistant Secretaries to lead the study effort.

Supply vs. Demand Reduction

QUESTION: In its request for additional resources, DEA presents a bleak assessment of its ability to make any "significant progress" against drug traffickers. And, recent statements by Jack Lawn, former DEA Administrator, and Robert Stutman, Former Director of the DEA New York Region, suggest that emphasis should be shifted from law enforcement to public education and other forms of demand reduction. In fact, this was the very sentiment presented by over thirty Federal, State, and local law enforcement witnesses that testified before this subcommittee in hearings held in South Carolina during February.

Given the assessment by persons long associated with drug law enforcement efforts, is there any real hope to assume that the increases DEA and other Justice Department agencies are requesting will have a significant impact on the governments anti-drug efforts? Should we be placing more emphasis and resources on drug demand reduction given the bleak enforcement picture presented by DEA?

ANSWER: Stopping drug abuse can only be accomplished when effective drug education is linked with drug law enforcement. Education can help to prevent today's youth from becoming involved in drugs tomorrow, but it alone is an ineffective way to deal the existing problems associated with drug abuse. Large drug trafficking organizations that have amassed tremendous profits from illegal drugs will not be encouraged to give up their wealth without severe penalties including loss of their profits. While education provides the answer in the long run, it does not have an immediate impact on many of the drug-related problems facing our society today.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

Drug Traffickers Resources In The Pacific Islands

QUESTION: According to an internal report to U.S. Interior Secretary Manuel Lujan, U.S.-affiliated Pacific Islands have become gateways for heroin from Asia's Golden Triangle. The Interior report found federal interdiction virtually nonexistent citing the need for enforcement money and additional DEA agents. Presently, there is just one Drug Enforcement Administration agent responsible for the four Pacific jurisdictions--American Samoa, the Northern Marianas, Palau, and Guam.

I am deeply concerned that the interests of these Pacific Islands have been ignored by the DEA. It is evident that problems with drugs and drug trafficking is not just a mainland problem. U.S.-Affiliated island populations suffer when federal drug enforcement efforts are lax. I believe the federal government has a commitment to these Pacific communities. When can I expect the DEA to send additional agents to support our efforts in the Pacific to combat drug trafficking?

ANSWER: DEA has scheduled one additional Special Agent to cover the Pacific Islands region. In addition, support for this region is provided as it is needed by DEA's Honolulu Resident Office.

According to DEA sources, heroin trafficking is not a major problem in the Pacific Islands region. It is not entirely accurate to refer to this region as a "gateway" for heroin shipped from Asia's Golden Triangle. No major shipments of heroin have been spotted in this region in the last several years. Recent Customs and National Guard joint efforts to increase inspection of packages have revealed no alarming increase in heroin trafficking.

DEA Media Campaigns

QUESTION: I am concerned about publicity surrounding DEA arrests. Recently, the DEA arrested several drug suspects. Thereafter, before formal charges were made, the DEA issued an immediate press release where the names and addressees of the arrestees became front page news. As a result, those who were arrested and their families were stigmatized. What is the general policy of the DEA regarding the release of information when drug arrests are made?

ANSWER: DEA generally issues press releases only when investigations into major trafficking organizations are involved or major drug figures are arrested. DEA's press release policy includes disclosure of arrestee's name, age, residence, employment, and marital status. Other information released to the press includes the type of charge, the identity of the arresting agency, the length and scope of the investigation, and circumstances surrounding the arrest, such as time, location, items seized, and possession of weapons. The above-mentioned information is considered public after an arrest is made and is in compliance with 28 CFR 50.2--Release of Information by the Department of Justice Regarding Criminal and Civil Proceedings.

DEA does not issue any information that may prejudice a case in a court of law. This type of information includes any opinions as to the character of the arrestee, any statement of admission, any reference to prior criminal record or potential witness credibility, and any opinion as to the arrestee's guilt or innocence.

QUESTION: Secretary Baker has testified before the Foreign Operations Subcommittee that the Administration is requesting in 1991 $441 million in military, economic and counter-narcotics assistance to support the Andean nations in their fight against drug cultivation and trafficking.

Is the DEA able to provide details as to how this money will be spent to aid the Andean nations in the fight against drugs?

How much of this funding will be spent on law enforcement, and interdiction and how much will be devoted to encouraging peasant farmers to grow alternative crops?

ANSWER: DEA's primary involvement in the Andean region is through Operation SNOWCAP. This initiative is a law enforcement effort conducted by Andean host countries, with the assistance of U.S. Federal agencies. The focus of this initiative is to attack cocaine trafficking at its source of production through interdiction and suppression activities.

DEA, the Bureau of International Narcotics Matters, U.S. Border Patrol, and U.S. Coast Guard are the Federal agencies principally involved in this initiative; the Department of Defense also assists in this effort by providing various supplies and occasional logistical support.

Approximately 150 DEA Special Agents have been trained and are available for participation in the Operation. At any given time, about 30 Agents are in Latin America, serving as advisors to the Andean host countries (at this point, primarily Bolivia and Peru). All DEA operations in the Andean region are consistent with the Office of National Drug Control Policy's Andean Strategy and with the initiatives of the International Drug Enforcement Conference (IDEC).

With regard to the total resources requested for this initiative, a response to this question is deferred to the Office of National Drug Control Policy (ONDCP). ONDCP is prepared to provide a coordinated briefing on this issue.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

Rural Areas

QUESTION: I noted on page 3 of Mr. Burke's testimony that DEA is revamping its rural-area drug enforcement strategy. I would appreciate more details on this initiative. What does the agency view as the main problems with drug trafficking in rural areas? What percentage of the drug trade does the DEA estimate takes place in rural areas?

ANSWER: The greatest concentration of Drug Enforcement Administration (DEA) resources is in its 19 Division Offices, located in major population centers throughout the United States. These cities are typically hubs of drug trafficking and abuse for particular geographic areas. Reporting to these Divisions are 160 Resident Offices located in smaller cities, such as Sioux Falls, South Dakota, San Ysidro, California, and Indianapolis, Indiana. DEA is increasing staffing in Resident Offices in order to provide greater geographic coverage nationwide. Because there are considerably more Resident Offices than Divisions, each office has a smaller geographic span of control and staffing increases at this level are more apparent to the public at large. These offices are still large enough, however, that they can provide adequate investigative manpower, resources, and technical and administrative support to the full range of DEA investigations.

Unfortunately, it is difficult to determine an overall rural drug problem or percentage of nationwide trafficking. For the most part, problems in rural areas are regionally-specific and no clear patterns are evident. Obviously, rural areas are largely responsible for marijuana cultivation and methamphetamine production because of the geographic nature of these areas. However, the production and distribution of these substances is typically controlled by major organizations.

DEA's intelligence and arrest statistics seem to indicate that abuse is the real rural problem, not trafficking. The traffickers that operate in rural areas are typically branches of organizations centered in major cities or small-time users who purchase drugs in the cities for personal use, plus a small surplus for distribution. Therefore, eliminating the core trafficking group remains the most effective strategy for both large cities and rural areas.

Fourth Amendment Abroad

QUESTION: I am concerned by the Supreme Court's recent decision in U.S. v. Verdugo-Urquidez (February 1990), which held that searches conducted by U.S. Agents (DEA) in foreign countries against non-U.S. citizens need not be made in conformity with the Fourth Amendment. I would

appreciate more information on the procedures the DEA now uses for conducting searches abroad.

ANSWER: Pursuant to procedures set forth in the DEA foreign guidelines, DEA Special Agents act in concert with foreign police when conducting foreign searches, seizures, and electronic surveillance abroad. In fact, in order to perform any investigative task overseas, DEA Agents must depend upon and seek the consent and aid of responsible foreign officials. DEA representatives do not participate in unilateral investigations or other activities outside the scope of the formal or informal agreement developed between the United States and the host government unless these activities have the express and explicit approval of a responsible host government official, the Ambassador, the DEA Country Attache, and the DEA Administrator. Furthermore, DEA Agents remain bound by the ban on U.S. personnel from participating in foreign police arrest actions and interrogations of U.S. persons, commonly known as the Mansfield Amendment (22 U.S.C. § 2291(c)).

These DEA foreign guidelines were followed in the Verdugo case. United States v. Rene Martin Verdugo-Urquidez, 110 S. Ct. 1056 (Feb. 28, 1990). As explained in the Verdugo decision, DEA received authorizations to search Verdugo's residence from the Director General of the Mexican Federal Judicial Police (MFJP), Florentino Ventura, after an unsuccessful attempt to contact the Second Deputy Attorney General for Mexico. Id. at 1059. Mr. Ventura ordered the MFJP to assist DEA in conducting the search. During the search, DEA Agents were accompanied by MFJP officers and obeyed the commands of the MFJP supervising officer. Id. Upholding DEA's activities in this case, the U.S. Supreme Court stated that "[i]f there are to be restrictions on searches and seizures which occur incident to such American action, they must be imposed by the political branches through diplomatic understanding, treaty, or legislation." Id. at 1066.

QUESTION: Does the agency believe Verdugo is necessary to carry out its functions?

ANSWER: DEA believes that the Verdugo decision is crucial to carrying out its foreign operations. To impose an American warrant requirement on U.S. Government actions abroad jeopardizes investigations and U.S. foreign relations.

QUESTION: Are there any special problems with securing warrants in these cases, especially where, as in Verdugo, the defendant was being held in the U.S.?

ANSWER: There are special problems with securing warrants for DEA foreign operations. First, U.S. judicial officers do not have the authority to issue a warrant for a search to be conducted outside U.S. boundaries. (Rule 41(a), Federal Rules of Criminal Procedure.) Second, as admitted by the Ninth Circuit Court of Appeals, a search warrant issued by an American magistrate would be a dead letter outside the United States. United States v. Rene Martin Verdugo-Urquidez, 856 F.2d 1214, 1230 (9th Cir. 1989). Only the host country's consent, and not an American warrant, empowers the Agents to exercise and perform their law enforcement functions in a foreign country.

There are practical problems with securing warrants for extraterritorial searches, as well. For example, the built-in delay caused by a search warrant requirement would jeopardize investigations. To obtain a warrant, Agents in a foreign DEA office must send by specially secured teletype or telephone (which frequently are not accessible or available) to a DEA domestic office the information necessary for an affidavit. The affidavit must be typed, presented to a judge, reviewed and approved by that judge. Subsequently, approval must be transmitted by secure means to the foreign office. The process can take days considering distance and time differences. Such delays would not be tolerated by foreign police agencies. Not only will they resent the intrusion, but they will not wait for DEA to get an American warrant. DEA does not have the authority overseas to control when a search is to be conducted. Unlike in Verdugo, usually we are given little advance notice of planned searches. The result would be that DEA would not be invited to participate in searches and thus would lose valuable evidence. Such a result is incompatible with DEA's mission and foreign policy objective of stopping illicit drugs at their source.

In addition, delay also provides an opportunity for someone to leak the information to the target of the search. In many countries in which DEA operates, corruption among government officials is pervasive. The precise information required in a search warrant application and affidavit (e.g., name, address, sources of information) would bring a high price. One tactic used to circumvent corrupt officials is withholding information to the last minute; this tactic was used successfully in the Verdugo search operation. The time-consuming process of obtaining a search warrant from afar could jeopardize the secrecy of a search operation and imperil confidential sources.

Finally, once secured, a search warrant would not provide meaningful protection by narrowing the scope of the search. In the typical case in which DEA Agents work in cooperation with our foreign counterparts, "[t]he foreign officials are the ones who decide the scope and reasonableness of any proposed search, whether the search will occur at all, and under what conditions it will be conducted." Id. at 1249. Moreover, host countries typically do not wish it to be known publicly that American agents have participated in domestic law enforcement and therefore insist on strict confidentially. A warrant requirement, which may expose these confidences, thereby may impair relations with host countries upon which DEA relies to conduct operations abroad.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

DEA Resources in Rural Areas

QUESTION: Please describe DEA's efforts at enhancing drug law enforcement efforts in rural areas. Will any of the enhancements requested in 1991 result in ameliorating the drug problems in areas outside of the High Intensity Drug Trafficking Areas?

ANSWER: DEA believes that the best way to launch a successful attack on drug trafficking organizations in rural areas is through a combined effort of increasing staffing in major drug trafficking areas and resident offices and increasing the participation of State and local law enforcement agencies through the State and Local Task Force program. DEA always responds to requests for assistance from law enforcement agencies regardless of their geographic location.

In looking closely at its rural drug enforcement strategy, DEA's policy now calls for greater focus on resident offices to better address problems in rural areas. Resident offices are more geographically dispersed than DEA divisions, but still concentrate DEA's resources in order to maximize impact. In addition, resident offices link State and local resources with national and international networks of information and experience. In 1990, 36 percent of the new agent positions were distributed to offices below the division level.

In addition, the State and Local Task Force program allows DEA to provide the training, equipment and supervision needed to launch an effective attack against drug traffickers in these areas. DEA currently has 60 State and local task forces located throughout the United States both in major cities and rural areas. In 1989, this program was responsible for the arrest of nearly one-third of DEA's total violators considered to be the highest level drug traffickers. In addition, the State and local law enforcement organizations are entitled to an equitable share of the assets forfeited as a result of their participation in a task force case. In 1989, DEA shared approximately $138.5 million in forfeited assets with State and local law enforcement agencies. These funds are often used to expand law enforcement efforts in the local areas. In 1991, DEA plans to convert at least nine State and local task forces from provisional status to program funded status, and will add more provisional task forces to the program.

Organized Crime Drug Enforcement Task Forces

QUESTION: The Anti-Drug Abuse Act of 1988 directs the Attorney General to submit in the budget request a unified separate appropriation for expenses of the Federal agencies participating in the Organized Crime Drug Enforcement Task Forces (OCDETF). What has been the

impact of this requirement on DEA's drug efforts? Is the war on drugs better served by adding resources directly to DEA for ongoing programs or to joint programs such as OCDETF? Has the requirement affected the ability of DEA to track the expenditure of drug funds?

ANSWER: DEA participates extensively in the OCDETF program, and was involved in over 70% of all investigations initiated in 1989. Prior to the implementation of the consolidated appropriation, DEA included resources for the OCDETF program in its own budget. Now it must seek reimbursement for its contribution to the program. Regardless of the source of funding, DEA will continue to contribute to this flagship program, and will continue to utilize its drug funds in an efficient and effective manner.

Foreign Operations Request

QUESTION: DEA is requesting a $4.9 million increase for foreign operations. The request includes 18 agents to expand 13 existing foreign offices and open one new overseas office in Salta, Argentina. What, in general, do agents do who are stationed abroad? What kind of enforcement authorities do they have outside of U.S. borders?

ANSWER: DEA agents stationed overseas have no direct enforcement authority. Their role is threefold: to cooperate with host country law enforcement officials in active investigations as appropriate; to collect intelligence through informant and other sources on drug trafficking activities and trends; and to act as liaison with the host country drug law enforcement officials on illicit drug-related matters.

Andean Region

QUESTION: Please discuss DEA's efforts in reducing drug production and trafficking in the Andean region of South America. What U.S. agencies are involved in these activities? How many DEA agents are involved?

ANSWER: DEA's primary involvement in the Andean region is through Operation SNOWCAP. This initiative is a law enforcement effort conducted by Andean host countries, with the assistance of U.S. Federal agencies. The focus of this initiative is to attack cocaine trafficking at its source of production through interdiction and suppression activities.

DEA, the Bureau of International Narcotics Matters, the Immigration and Naturalization Service's Border Patrol, and U.S. Coast Guard are the Federal agencies principally involved in this initiative; the Department of Defense also assists in this effort by providing various supplies and occasional logistical support.

Approximately 150 DEA special agents have been trained and are available for participation in the Operation. At any given time, about 30 agents are in Latin America, serving as advisors to the Andean host countries (at this point, primarily Bolivia and Peru). All DEA operations in the Andean region are consistent with the Office of National Drug Control Policy's Andean Strategy and with the initiatives of the International Drug Enforcement Conference.

Chemical Diversion and Trafficking Act

QUESTION: The Chemical Diversion and Trafficking Act, enacted as part of the Anti-Drug Abuse Act of 1988, calls for recordkeeping and reporting with respect to sales of certain chemicals which can be used in manufacturing a controlled substance.

Please discuss DEA's implementation of the Act.

ANSWER: DEA has conducted a number of training programs throughout the United States to familiarize the chemical industry, DEA's investigative personnel, U.S. Customs Service agents, and Assistant U.S. Attorneys with the provisions of the Act and the implementing regulations.

DEA's domestic field personnel are conducting a survey to identify the target population of the Act, the chemical handlers. This includes on-site visits to these firms to explain the provisions and regulations of the Act to management, as well as soliciting their cooperation in a number of voluntary measures, including identification of their overseas clientele.

The import/export provision requires importers and exporters to declare shipments 15 days prior to the shipment. DEA grants "regular customer" status to companies that have proven a legitimacy in regular shipments. As part of this provision, 61 of the 197 requests for "regular customer" status have been denied and four chemical shipments have been suspended.

QUESTION: Are you seeing any result of the Act?

ANSWER: Yes, we are beginning to see some very encouraging results. DEA has had success in using the Chemical Act to arrest individuals diverting listed chemicals for illicit purposes. For example, on August 30, 1989, a Federal grand jury in Dallas, Texas indicted two owners and two employees of two chemical companies who were selling listed chemicals used in the clandestine manufacture of methamphetamine. Also, on January 9, 1990, four men were arrested by DEA in Manhattan and charged with conspiracy to possess or distribute a listed chemical knowingly, or having reasonable cause to believe that the chemicals would be used in the illicit manufacture of a controlled substance.

In addition, 20 gallons of ether and 32 gallons of acetone were seized.

In addition, since the Chemical Act has been implemented, prices for listed chemicals and clandestinely manufactured methamphetamine have increased in some areas of the country. In Texas, for example, the price for one ounce of methamphetamine has doubled. The price of a 110-pound drum of phenylacetic acid, a precursor chemical used to manufacture methamphetamine, has more than doubled.

QUESTION: Your budget documents indicate that the Act requires you to audit 6,000 chemical suppliers every three years. This appears to be an enormous task. Does the Act give you any discretion in this regard?

ANSWER: The Chemical Diversion and Trafficking Act provides authority for DEA personnel to conduct an inspection of a chemical firm that is subject to the Act. The purpose of an inspection is to insure that the required records and reports are maintained and that the chemical firm is complying with the purpose and intent of this legislation. Chemical handlers will be inspected once every three years on a rotating basis.

QUESTION: What is DEA doing internationally to promote chemical control legislation?

ANSWER: While significant improvements have been made domestically, there has been a dramatic shift toward European chemical handlers to fill the gap in supply. DEA is currently assisting the Organization of American States in drafting chemical control legislation which will be used as a model throughout Latin America. DEA is also actively involved in an international chemical conference to be held early this summer hosted by the International Narcotics Control Board.

Intelligence

QUESTION: For Intelligence, DEA is requesting an increase of 57 intelligence analysts. Does this request have any relationship to the proposed National Drug Intelligence Center? Fifty-four of these positions are for operational intelligence. Please explain the duties of an operational intelligence analyst at DEA.

ANSWER: DEA's request for 57 new intelligence analyst positions bears no direct relationship to the proposed National Drug Intelligence Center. These positions are intended to provide much needed resources for intelligence support of specific investigations, including money laundering cases, and to augment tactical intelligence capabilities at EPIC.

An operational or financial intelligence analyst exploits all relevant information available to DEA in support of active investigations. This support includes production of intelligence file reviews, telephone toll analyses, document analyses, and informant debriefings. The goal of these efforts is to link events and individuals involved in drug trafficking. The data is used both in assisting the case agent and for presenting evidence before grand jury proceedings and trials.

Administratively Uncontrollable Overtime

QUESTION: As you know, last year Congress passed legislation which had the effect of increasing overtime costs (AUO) for law enforcement functions. I understand that DEA must absorb about $14 million to accommodate the additional overtime costs.

Earlier this year, I joined Senators DeConcini, Domenici and Hollings in writing to Director Bennett to suggest that Special Forfeiture Funds might be better spent to cover AUO costs than for establishing the proposed National Drug Intelligence Center. On April 11, Director Bennett advised us that he was proposing that $14 million for the Special Forfeiture Fund be allocated to Justice for drug-related pay and AUO costs for the FBI, INS and the Drug task forces. However, DEA was not included in the list. Was DEA consulted about this? Could DEA use additional resources for AUO increases?

ANSWER: DEA was consulted regarding this proposal to use Special Forfeiture Funds to offset the cost of additional overtime expenses.

DEA's AUO requirements are listed as mandatory increases in its budget submission. To obtain this level of increase, DEA chose to delay the purchase of basic operating items for a portion of the new Agent request in 1991. Rather than cut specific programs, DEA will delay a part of its rent, utilities, and funds for the purchase of evidence and information, until at least halfway through the fiscal year. Because new agents will not be on-board for the full year, lapsing these resources will have no effect on DEA's planned operations in 1991. In the second year, DEA will have to pay full-year costs for the support items that were lapsed, so sufficient funding in 1992 will be required.

Air Wing

QUESTION: DEA is requesting $10 million to partially fund the relocation of the DEA aviation facility currently located in Addison, Texas. Where will this facility be built? Have you examined the possibility of using an existing military facility? How is DEA's air fleet used? For what types of missions, in what parts of the country? In what capacities is the air fleet used outside the borders of the United States? Your budget documents 3indicate that you are requesting $8 million for the purchase of two turboprop aircraft. These will be placed in South America in support of the planned expansion of

Operation SNOWCAP to two additional countries. Which countries?

ANSWER: The mission of the DEA Aviation Section is to provide domestic investigative support and foreign intelligence gathering and operational support. Aviation support is conducted by special agent pilots and aircraft that are assigned to various DEA offices throughout the United States and in South America. The domestic mission is accomplished primarily with single engine fixed-wing aircraft that conduct air-to-ground surveillance and undercover missions. DEA's foreign mission is accomplished primarily with large turboprop aircraft that carry intelligence equipment and personnel in order to identify clandestine laboratories, airstrips, cultivation sites, etc., and also to transport equipment, supplies, and personnel to remote areas in South America.

The two turboprop aircraft requested in the 1991 budget will be placed in either Ecuador and/or Brazil, the two new countries, in order to establish permanent aviation support in these two countries, or in La Paz, Lima or Bogota in response to outstanding requests for additional aviation support. A final assessment will be made at the time the aircraft are acquired.

Current plans call for the new aviation facility to be built at Alliance Airport in Ft. Worth, Texas. Several criteria were used in choosing a site for the new DEA aviation facility. First, DEA needed a site located in the southern part of the United States within 1,600 nautical miles of Panama since Panama serves as a staging area (refueling, storage, etc.) for aircraft and equipment enroute to South America. Second, DEA needed a site centrally located in the United States since the maintenance of our aircraft is done at a centralized location.

In evaluating sites that met these criteria, an assessment was made of military bases in the area. It was determined that the operational restrictions associated with active military bases would prohibit DEA from meeting its operational requirements. The site at Ft. Worth met all criteria and provided the most operational flexibility for DEA.

Drug Use By Students

QUESTION: Your budget documents say: ". . .the drug crisis has escalated to a level more costly and deadly than was previously believed possible. Day after day, news accounts throughout the country report of the increasing drug-related violence terrorizing our cities. Unfortunately, this trend does not show signs of abating. . . ."

At the same time, a recent study found that illegal drug use among high school students has continued to decline,

bringing student drug use to its lowest levels in 15 years.

Can you explain why these two patterns co-exist?

ANSWER: There are likely to be many reasons why these two patterns co-exist. The principal reason may be, however, that the high school student survey shows encouraging trends for the future. Meanwhile, DEA faces a drug trafficking threat fed by a population in which drug abuse remains great. DEA must respond to the current threat.

QUESTION: **How pervasive is the drug problem in our Nation, and why is the violence ever increasing?**

ANSWER: The drug problem in America crosses the entire spectrum of our society, affecting all walks of life, all age groups, and all disciplines.

It is estimated that one in every 14 individuals over the age of 12 uses an illicit drug at least monthly and workplace drug abuse by employees costs United States businesses and the economy an estimated $60 billion each year. In 1989, an estimated 375,000 babies were born to drug-addicted mothers in the United States.

The violence associated with drug use has skyrocketed in recent years. Daily headlines highlight this tragedy. Street gangs are having a profound effect on society bringing with them a deadly wave of crack cocaine, PCP, and drug-related violence. In addition, the pervasiveness and availability of semi-automatic weapons is directly affecting the violence plaguing the United States today.

DOJ Inspector General Audit

QUESTION: **An audit performed by the Justice Department's Inspector General found irregularities and waste in a wide variety of DEA contracts. Among other things, the audit reportedly found that DEA has ignored competitive bidding regulations and that DEA does not have adequate internal controls.**

Has DEA responded formally to this audit?

ANSWER: Due to the nature of DEA's mission, there are instances in which less than the desirable two-year leadtime is available for securing contracts. While best efforts are made to adhere to an "ideal" procurement strategy, it is not always possible as unforeseen health and safety situations arise suddenly and often without warning. For example, while a DEA aircraft was operating in a remote and potentially unsafe region, it required immediate repairs due to an accident. Due to the location, parts had to be obtained quickly and flown to the area. Certain contracting regulations had to be waived because of the emergency situation.

QUESTION: Are steps being taken to improve DEA management?

ANSWER: DEA is in the process of reorganizing its contracting and procurement functions. DEA has converted the special agent supervisor position to a professional contract specialist position. An individual has been selected for this position and is currently awaiting a security clearance. In addition, a reorganization proposal is being drafted which would divide the existing unit into two entities by function, contract initiation and award, and contract maintenance and small purchases.

DEA/FBI Cooperation

QUESTION: There have been persistent complaints about the lack of DEA and FBI cooperation in drug law enforcement. It is alleged that DEA and FBI independently develop investigative strategies and priorities, operate separate intelligence systems and use different systems for reporting and measuring performance. Could you please discuss this.

How is the coordination of the drug war proceeding?

How would you characterize the drug investigation strategies of DEA and FBI, respectively?

What projects have the agencies undertaken to enhance coordination?

ANSWER: The DEA and FBI are the two primary Federal agencies with responsibility for enforcement of Title 21, United States Code. The DEA and FBI as separate and distinct agencies, utilize different investigative strategies to counter drug trafficking. For example, DEA's strategy relies heavily upon the use of confidential informants. By targeting individual traffickers, DEA has built, and will continue to build, a significant roster of informants within trafficking organizations. By comparison, the FBI, while focusing on the organization as a whole, will rely on the use of many agents to staff surveillance operations and Title III operations. While the strategies of these agencies are different, they also complement each other.

Many times, the case will dictate the type of strategy necessary. In situations where the other agency's strategy and resources will benefit an investigation, DEA and the FBI will work on the case jointly. Joint investigations have proven to be very successful, mainly because the agencies have pooled their individual strategies and resources.

DEA and FBI have designed their intelligence systems and performance measurement systems to fit their individual strategies. DEA systems concentrate primarily on drug traffickers and related information, while the FBI systems will focus on major trafficking organizations.

Both DEA and the FBI take proactive roles in targeting traffickers and organizations and design their strategies accordingly; however, DEA must also design its strategies based on a reactive role. DEA, as the leading drug enforcement agency, must also respond to local needs for a Federal drug enforcement presence. This requires DEA to develop strategies at the street level as well as the major organization level.

Coordination of the drug war is proceeding well. There were 77 more joint DEA/FBI investigations in 1989 than in 1988. There have been numerous projects between the two agencies to enhance cooperation. One of the more successful ventures has been the Joint Intelligence Working Groups in the Miami and Chicago field offices of DEA and FBI. Coordination with other agencies is improving as well. Recently DEA and the U.S. Customs Service entered into a memorandum of understanding which will cross-designate 1,000 additional Customs agents.

While there will continue to be differences, and in some cases, lack of cooperation among drug enforcement agencies, these instances will be few and should not be allowed to overshadow the many instances of a successful, coordinated drug enforcement effort.

CONCLUSION OF HEARINGS

Senator **Hollings**. I thank you very, very much, Mr. Burke. This will conclude our scheduled hearings. We could have some others at the call of the members, but we will keep the record open for you, sir, your associates, and for the Senators, OK?

Mr. **Burke**. Thank you.

Senator **Hollings**. Thank you very much.

[Whereupon, at 11:44 a.m., Wednesday, May 2, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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